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INTERSTATE COMMERCE COMMISSION REPORTS

VOLUME 64

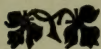
DECISIONS OF THE
INTERSTATE COMMERCE COMMISSION
OF THE UNITED STATES

AUGUST TO DECEMBER, 1921

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COMMISSIONER McCHORD was elected chairman on October 3, 1921.

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INTERSTATE COMMERCE COMMISSION REPORTS.

INVESTIGATION AND SUSPENSION DOCKET No. 1339.

CLASSIFICATION RATINGS AND CARLOAD MINIMUM WEIGHT ON GARDEN TRACTORS.

Submitted July 2, 1921. Decided August 4, 1921.

Proposed less-than-carload ratings and carload minimum on garden tractors found justified.

Robert W. Fyfe for western classification lines; *F. W. Smith* for official classification lines; and *E. K. Voorhees* and *Henry Thurtell* for southern classification lines.

Edgar J. Rich and *Lionel A. Norman* for protestant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

By DIVISION 3:

At present the consolidated freight classification contains no specific ratings on garden tractors. They are generally shipped under the item "Machinery and Machines, Engines, Steam or Internal Combustion, Traction or Tractors, steam or internal combustion." By schedules filed to become effective May 25, 1921, respondents proposed to provide specific ratings for garden tractors. In so doing the less-than-carload ratings now applied on this article when shipped knocked down, in boxes or crates, would be changed from third to second class in southern, and from first to second class in western territory. No change is proposed in the less-than-carload rating of first class in official territory. The carload ratings, fifth in official, sixth in southern, and class A in western territory, would remain unchanged, but the minimum weight, when the article is shipped knocked down, in boxes or crates, would be increased from 20,000 pounds to 24,000 pounds for a standard 36-foot box car, subject to rule 34, which provides for graded minima for longer cars. Upon protest filed by the Associated Industries of Massachusetts in behalf of H. C. Dodge, Incorporated, of Boston, Mass., hereinafter referred to as protestant, the operation of the schedules was suspended until October 22, 1921.

It developed at the hearing that the proposed less-than-carload ratings are satisfactory to protestant, and that the protest against the proposed increased minimum weights is based upon physical inability to load the garden tractor made by protestant to the required minima.

This tractor has one large front and two small rear balance wheels, and is driven by a gasoline engine. By the use of certain attachments, which are separate from the tractor itself, it can be converted into a cultivator, seeder, plow, sweeper, or lawn mower. The weight is approximately 135 pounds net, and from 185 to 190 pounds crated for shipment. In crating the small rear wheels are removed and the machine then rests on the frame, thus saving a loading space of about 40 per cent. When crated it measures about 70 inches in length, 24.5 inches in width, and 20 inches in height; and the weight per cubic foot is about 10 pounds. The record shows that 112 crates, weighing in the aggregate about 20,720 pounds, is the maximum loading for a box car 36 feet long by 8 feet 2 inches high. If the car is 8 feet 6 inches high, it will carry two crates more. Protestant insists that it is impracticable to ship its product in a smaller crate than at present, or any more disassembled, for the reason that if the handles, a part of the frame, are taken down, the direct connections between them and the engine, the gas tank and the gas feed pipe, the ignition control and the spark control also have to be taken down, and the average buyer would not know how to reassemble. Owing to the size of the package the weight which can be loaded does not increase as the size of the car increases. Protestant's tractor, first marketed in October, 1920, is sold chiefly to farmers in official and western territories, the price being \$150. Carload shipments, which are now estimated at three per week, did not commence until March, 1921. At present more of these tractors are sold in carloads than in less-than-carloads.

The record affirmatively shows that all other garden tractors on the market load up to or in excess of 24,000 pounds. Respondents maintain that the propriety of a carload minimum weight must be considered in the light of loading possibilities of an entire line of the article to be covered rather than of either the lightest or heaviest type in the group and refer to *Thurber v. N. Y. C. & H. R. R. R. Co.*, 3 I. C. C., 473, 502. We there said—

as classifications and rates must be general an injurious effect in some cases and to some interests is unavoidable, but so long as in the main they are satisfactory the rule applies that the good of the greater number is paramount.

The present classification item, which embraces garden tractors, also includes field, road, and, in fact, any kind of steam or internal-combustion tractor, irrespective of weight, and accords to them in each territory the same carload rating, minimum 20,000 pounds,

whether shipped knocked down, or set up, loose, or in packages. The garden type ranges in weight from 135 to 1,100 pounds. Some field and road tractors weigh less than the heavy garden tractors, others exceed 8,000 pounds. Protestant contends that a line of demarcation based on rating can not be drawn at times between the heavy garden tractors and the light field or road tractors. But most, if not all, field and road tractors are shipped set up and can only be floor loaded.

We find that the schedules under suspension have been justified, and an order vacating the order of suspension will be entered.

64 I. C. C.

No. 11725.

MITSUI & COMPANY

v.

DIRECTOR GENERAL, AS AGENT, CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, ET AL.

Submitted March 25, 1921. Decided August 4, 1921.

Rate applicable on one carload of pig lead from Granby, Mo., to Seattle, Wash., for export, found not unreasonable, unjustly discriminatory, or unduly prejudicial. Refund of overcharge directed and complaint dismissed.

E. J. Forman for complainant.

L. B. LePonte for defendants.

John F. Finerty and *Thomas M. Woodward* for Director General, as Agent.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by the defendants to the report proposed by the examiner. We have reached conclusions differing from those proposed by him.

Complainant, a corporation engaged in the general domestic import and export business at Seattle, Wash., alleges that the rate of \$1.575 charged by defendants on one carload of pig lead shipped July 22, 1918, from Granby, Mo., to Seattle for export was unreasonable, unjustly discriminatory, and unduly prejudicial to the extent that it exceeded the rate of 75 cents subsequently established. We are asked to award reparation. Rates are stated in amounts per 100 pounds unless otherwise indicated.

The shipment, weighing 66,715 pounds, moved over the St. Louis-San Francisco to Kansas City, Mo., and the Chicago, Burlington & Quincy and the Northern Pacific beyond, the only routing indicated by the shipper being the designation of the latter as the delivering carrier. Charges were collected in the sum of \$1,050.76 on the basis of a rate of \$1.575, composed of \$1.10 from Granby to Kennewick, Wash., and 47.5 cents beyond. A combination rate of \$1.38 composed of \$1.10 to Sweeney, Idaho, and \$5.60 per net ton, or 28 cents per 100 pounds, beyond was applicable under rule 5(b) of Tariff Cir-

cular 18-A. The shipment was, therefore, overcharged \$130.09, which amount should be promptly refunded.

Prior to the period of federal control it was the practice of west-bound transcontinental carriers in meeting competition through the Atlantic ports to accept on export traffic moving through the Pacific ports something less than their local or domestic rates. Export rates were the same in amount to all of the principal Pacific coast ports, including San Francisco, Calif., and Seattle, and while there were exceptions this was also generally true in respect of the level of domestic rates. Because of the absence of competition of the kind referred to during the war, all export rates were canceled by the Director General of Railroads on June 25, 1918. Although some rates of this character were reestablished shortly thereafter, for the most part domestic rates were applied to both classes of traffic at the time this shipment moved. The rate then on pig lead from Granby to San Francisco was 94 cents. This rate would have applied if the shipment had been exported through that port instead of through Seattle. In explanation of the reason for sending the shipment by the latter port complainant states that it was under the impression that the usual parity of rates then obtained. There is very little difference in the distance from Granby to the two ports. On April 21, 1919, subsequent to the movement, defendants established to both San Francisco and Seattle an export rate of 75 cents.

No evidence in support of the allegations of unjust discrimination or undue prejudice was submitted, and upon the hearing complainant in support of its claim of unreasonableness relied mainly upon a comparison with the 94-cent rate contemporaneously maintained to San Francisco. Defendants' testimony consisted principally of an explanation of the reasons for maintaining, during normal times and under competitive conditions, which admittedly did not prevail when this shipment moved, lower export than domestic rates on west-bound transcontinental traffic. They contend that the applicable rate of \$1.38, which for the haul of 2,286 miles yields earnings of 12 mills per ton-mile and, based upon the weight of this shipment, 40.3 cents per car-mile, was not unreasonable. They point to the fact that pig lead, in carloads, is rated fifth class in the governing classification, and that this rate is but 66 per cent of the contemporaneous fifth-class rate of \$2.10. Under the 94-cent rate in effect to San Francisco the earnings would have been 8.2 mills per ton-mile and 27.4 cents per car-mile.

We find that the applicable rate of \$1.38 per 100 pounds was not unreasonable, unjustly discriminatory, or unduly prejudicial. The complaint will be dismissed.

No. 11650.

TEXARKANA PIPE WORKS

v.

DIRECTOR GENERAL, AS AGENT.

Submitted March 17, 1921. Decided August 4, 1921.

Minimum charge of \$15 per car on raw clay from Post Pipe Spur, Ark., to Texarkana, Tex., found unreasonable. Reparation awarded.

F. L. Ruland for complainant.

John F. Finerty, James M. Chaney, Alex. M. Bull, and E. C. Blanchard for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner.

Reparation is asked on 238 carloads of raw clay shipped during the period from June 28 to September 17, 1918, from complainant's clay pit, shown in the tariffs as Post Pipe Spur, in Arkansas, to its plant in Texarkana, Tex.; upon the allegation that the minimum charge of \$15 per car in effect during that period was unjust and unreasonable to the extent that it exceeded a rate of 1.5 cents per 100 pounds, minimum 80,000 pounds.

Complainant's clay pits lie outside the switching limits of Texarkana at the end of a spur 1.125 miles long which leaves the Missouri Pacific main line 3.5 miles northeast of the point in Texarkana where the main line crosses the Arkansas-Texas state line. Complainant's plant is in Texarkana and is reached by a sidetrack, 0.125 mile long, extending from a point on the Texas & Pacific 0.75 mile west of the state line. The pit and the plant are 5.5 miles apart.

Prior to June 25, 1918, complainant paid for this movement a rate of 1 cent per 100 pounds, subject to a minimum of 50,000 pounds, or \$5. On that date, under general order No. 28 of the Director General of Railroads, the rate was increased to 1.5 cents, minimum charge \$15 per car. Complainant protested against the new minimum charge and, under authority from the Railroad Administration, the Missouri Pacific published a tariff, effective November 21, 1918, which was intended to substitute a minimum of 80,000 pounds on

this particular traffic. Through inadvertence the tariff did not carry the necessary provision and the \$15 minimum charge remained applicable until April 17, 1919. Since the latter date the line-haul rate subject to the 80,000-pound minimum has applied. Complainant's shipments all weighed less than 80,000 pounds and reparation is asked in the amount of \$3 per car.

Complainant contends that the Director General was not justified in exacting such an increase in compensation for a movement which it characterizes as virtually a switching movement.

For defendant it is stated that the minimum charge was established in the belief that much short-haul traffic was not bearing its proper proportion of the cost of transportation, and that relatively greater increases should be made on short-haul than on long-haul traffic. Defendant contends that cancellation of the \$15 minimum as applied to complainant's shipments of clay was a concession, pending opportunity for further investigation, and should not be regarded as an admission of unreasonableness. Logs, brick, cement, coal, and other commodities were specifically excepted from the application of that minimum.

Defendant's estimate of the cost of this service at \$15.02 per car, not including allowances for maintenance of way, telegraphing, superintendence, or overhead expenses, is not supported by complete and reliable evidence based upon actual tests.

In *Dickey v. Director General*, 62 I. C. C., 223, we found that the minimum charge of \$15 per car on clay from Dickey Clay Spur, Mo., to Deepwater, Mo., a haul of 4.5 miles, was unreasonable to the extent that it exceeded 1.5 cents per 100 pounds on shipments weighing 80,000 pounds and over, equivalent to \$12 or more per car.

We find that the minimum charge assailed was unreasonable to the extent that it exceeded the charge which would have accrued at the rate of 1.5 cents per 100 pounds, minimum 80,000 pounds; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with rule V of the Rules of Practice.

64 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 1326.
ABSORPTION OF SWITCHING CHARGES AT TOLEDO,
OHIO. (2)

Submitted August 22, 1921. Decided September 12, 1921.

1. Proposed reduction in absorption of switching charges on grain and feed receiving transit at Toledo, Ohio, found not justified. Suspended schedule ordered canceled.
2. Schedules covering absorption of switching charges on other traffic found justified. Order of suspension vacated.

James Stillwell for respondent.

L. G. Macomber for protestants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS EASTMAN, CAMPBELL, AND LEWIS.

BY DIVISION 3:

By schedules filed to become effective June 1, 1921, respondent, Pennsylvania Railroad, proposes to fix \$9 per car as the maximum amount which it will absorb of the switching charges of other carriers on carload traffic of grain and feed receiving transit at Toledo, Ohio. Increases in the through charges to shippers would result. It also proposes to absorb certain switching charges of other carriers at Toledo on sugar, beans, lumber, ties, timber, poles, and posts accorded transit at that point and on timber articles receiving preservative treatment. Upon protest of interested shippers the schedule on transit grain and feed and, upon our own motion, the schedules covering the other commodities mentioned were suspended until October 29, 1921.

As to the traffic other than transit grain and feed it developed at the hearing that heretofore the respondent had absorbed none of the connecting lines' switching charges at Toledo, and that the suspended schedules covering such traffic provided certain absorptions which would reduce the through charges to shippers. These schedules are not protested, and there appears to be no good reason why they should not go into effect.

The effect of the proposed changes on grain and feed will be seen from the following illustration: The total of charges for certain switching at Toledo was \$15.25 prior to August 26, 1920, and is now \$21. The amount absorbed by respondent was \$6.50 prior to that date

and is now \$12.25. Under the proposed schedule \$9 would be absorbed by respondent, leaving a balance of \$12 to be paid by the shipper instead of \$8.75 as at present.

The respondent's justification is that even with the maximum absorption fixed at \$9 the shipper would in no case pay more than a 40 per cent increase in through charges over those of August 25, 1920; and that the respondent should be required to absorb no more than 140 per cent of its previous absorption. In other words, it is clear, and respondent so admits, that the purpose of the proposed provision is to limit the amount which will be absorbed to 40 per cent over and above the amount absorbed prior to August 26, 1920, this being, it is contended, in harmony with *Increased Rates, 1920*, 58 I. C. C., 220. The issues are identical with those considered by us in *Absorption of Switching Charges at Toledo*, 62 I. C. C., 30, and as was said there—

The mere fact, if true, that respondent need not have increased the amount of the absorption more than 40 per cent does not in itself justify the increased charges to shippers which would result from the decrease here proposed in the amount of the absorption.

The burden is upon the respondent to justify the increased charge to the shipper resulting under the suspended schedule on grain and feed. We find that this burden has not been sustained. An order will be entered requiring respondent to cancel this schedule. The other schedules under suspension will be permitted to go into effect and our order of suspension covering them will be vacated.

64 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET NO. 1359.

RESTRICTION IN ROUTING EXPLOSIVES VIA THE
NORFOLK & WESTERN RAILWAY.

Submitted August 26, 1921. Decided September 19, 1921.

Proposed increased rates on high explosives, in carloads and less than carloads, from stations on the Delaware, Lackawanna & Western and certain connections to destinations on the Norfolk & Western found not justified. Suspended schedules ordered canceled and proceeding discontinued.

Frank H. Pitman for Norfolk & Western Railway.

George R. Horn for protestant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS EASTMAN, CAMPBELL, AND LEWIS.

BY DIVISION 3:

By exceptions to the official classification, the Delaware, Lackawanna & Western provides for the application of joint rates on high explosives, first class in carloads and double first class in less than carloads, from most stations on its lines, and on certain connections to points on lines in official territory, including stations on the Norfolk & Western. As to points reached by or via the Norfolk & Western, hereinafter called respondent, it is proposed by schedules filed to become effective July 15, 1921, to restrict the application of the exceptions to explosives moving to specifically named destinations on the Chesapeake & Ohio and to points beyond that line. The proposed change would eliminate the joint class rates which now apply to Norfolk & Western stations, leaving higher combination rates in effect. Upon protest of the Atlas Powder Company, which operates an explosives plant at Mount Arlington, N. J., the schedules were suspended until November 12, 1921.

As illustrative of the increases to representative points, the proposed combination of first-class rates from Mount Arlington exceeds the present joint rates by 3.5 cents per 100 pounds to Bluefield, W. Va., 17.5 cents to Norton, Va., 42 cents to Roanoke, Va., and 59.5 cents to Basic, Va.

The position of the respondent is that it has not ordinarily participated in joint rates on high explosives, but has demanded its local class rates, mainly because of the additional hazard of transportation on its lines through the coal fields. It states that the

Chesapeake & Ohio and the Virginian, the other important roads in this destination territory, likewise do not, as a general rule, participate in joint class rates to the coal-fields region, and that the present joint rates were brought about through misunderstanding of the publishing line as to the extent of its authority. Respondent did not attempt to justify the full measure of the increased rates, but proposes to withdraw the proposed combination rates and to effect the publication of joint commodity rates on the same basis, distance considered, as the rates which now apply from Reynolds, Pa., Gibbstown, N. J., and other eastern producing points to points on its lines, which rates were originally established on the combination basis but now deviate to some extent therefrom.

Respondent applies first-class rates on carload and double first-class on less-than-carload shipments between stations on its lines. It has participated in the past and now participates in joint rates on the same basis from eastern trunk line points, including Mount Arlington, to destinations on its Winston-Salem and Durham divisions, and to points on other lines in southeastern territory. It further participates in certain joint class rates, both eastbound and westbound, between central and trunk line territories. Some traffic to southeastern territory passes through the mine fields, though apparently not through the more congested portion. On the other hand, the greatest increases which would result from the application of the suspended rates are to points not in or beyond the coal fields.

In *Nitro Powder Co. v. West Shore R. R. Co.*, 35 I. C. C., 77, we held that normally the rates on high explosives, in carloads, should not exceed the rates on articles taking the first-class rating, while the less-than-carload rates should not exceed double first class. The facts here presented do not justify a departure from the joint class-rate basis.

We find that the proposed schedules have not been justified. An order will be entered requiring their cancellation and discontinuing this proceeding.

INVESTIGATION AND SUSPENSION DOCKET No. 1346.

LUMBER AND OTHER COMMODITIES BETWEEN EL PASO, TEX., AND POINTS IN OREGON, WASHINGTON, UTAH, AND IDAHO.

Submitted August 4, 1921. Decided September 24, 1921.

Proposed increased rates between El Paso, Tex., and points in Oregon, Washington, Utah, and Idaho, found not justified.

W. A. Robbins, S. J. H. French, Ben C. Dey, H. A. Hinshaw, H. B. Brownell, F. A. Cleveland, and J. C. Fox for respondents.

Hal F. Wiggins, William C. McCulloch, H. N. Proebstel, F. C. Tockle, R. J. Knott, and F. G. Donaldson for protestants.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS DANIELS, AITCHISON, AND LEWIS.
DANIELS, *Commissioner*:

By schedules filed to become effective June 1, 1921, and later dates, respondents proposed to increase certain rates between El Paso, Tex., and points in the states of Oregon, Washington, Utah, and Idaho, hereinafter referred to as northwestern points. Upon protest these schedules, which named rates on lumber and other forest products eastbound and on various commodities westbound, were suspended until October 29, 1921.

The publication of the increased rates under suspension was part of an attempt by respondents to increase rates between El Paso and northwestern points from 25 to 33½ per cent over those in effect on August 25, 1920, thereby restoring El Paso to transcontinental group H. Other tariffs carrying increases between the same points were not suspended, for the reason that protests were not received in sufficient time for consideration; and still others, carrying westbound rates, were suspended by us and the increased rates found not justified in *Proposed Increased Rates from and to El Paso*, 61 I. C. C., 689.

The Southern Pacific Company, whose lines form the short route between Portland, Oreg., and El Paso, was represented at the hearing, but its counsel made no statement and offered no evidence. Counsel for other respondents stated that it was their understanding that the

Southern Pacific would assume the burden of the defense and that they were not prepared to offer evidence as to the reasonableness of the proposed increased rates. They pointed out the rate situation which would result from a permanent suspension of the increased rates, and stated that it was their desire either to secure relief from the requirements of the long-and-short-haul rule of the fourth section of the act for certain circuitous routes between El Paso and north-western points or to cancel the present rates over such routes. Both counsel and witnesses were under the impression that only rates on lumber and other forest products eastbound were involved.

The distance from Seattle, Wash., for example, to El Paso via the Northern Pacific Railway, Portland, and the lines of the Southern Pacific is 2,124 miles. Over routes through Colorado junctions the distances range from 2,415 to 3,141 miles, while over routes through Kansas City, Mo., the distances are from 3,187 to 3,593 miles. The routes as to which respondents desire either to cancel through rates or to secure permission to continue to carry higher rates to and from intermediate points are those through Kansas City. Deviations from the long-and-short-haul rule were created or the measure thereof increased as a result of increasing transcontinental rates to and from El Paso 25 per cent and to and from intermediate points $33\frac{1}{3}$ per cent.

As stated, there was no attempt to establish the reasonableness of the proposed increased rates, and we find that they have not been justified. Justification for the cancellation of the present through rates over routes through Kansas City or the granting of fourth section relief over such routes are questions not properly before us for consideration. An order will be entered requiring the cancellation of the schedules under suspension and the discontinuance of this proceeding.

No. 11622.¹

E. I. DU PONT DE NEMOURS & COMPANY

v.

DIRECTOR GENERAL, AS AGENT, GENESEE & WYOMING
RAILROAD COMPANY, ET AL.

Submitted May 24, 1921. Decided September 8, 1921.

Rates on common salt, in carloads, from Retsof, Watkins, Ithaca, and Ludlowville, N. Y., to Carney's Point, Gibbstown, and Paulsboro, N. J., found not unreasonable. Complaints dismissed.

*J. M. Liggett, C. M. Sparge, and V. S. Thomas for complainant.
Henry Wolf Bickl  for defendants.*

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS McCHORD, DANIELS, AND ESCH.

BY DIVISION 2:

Exceptions were filed by complainant to the report proposed by the examiner, and the case was orally argued before us.

Complainant, a corporation, by complaints filed July 10 and September 13, 1920, as amended, alleges that the rates charged on 412 carloads of common salt shipped from Retsof, Watkins, Ithaca, and Ludlowville, N. Y., to Carney's Point, Gibbstown, and Paulsboro, N. J., during the period from July 10, 1917, to May 26, 1920, inclusive, were unreasonable and unduly prejudicial. We are asked to award reparation. Rates are stated in cents per 100 pounds and do not include the 1920 increases, except as noted.

The points of origin are in the salt-well district of western and central New York. The destinations involved are on the Penn's Grove branch of the West Jersey & Seashore, hereinafter called the West Jersey, a part of the Pennsylvania system, hereinafter called the Pennsylvania. Carney's Point is at the terminus of the branch, 30 miles from Camden, N. J., and 50 miles from Philadelphia, Pa. using constructive mileage.

Of the total shipments 375 moved to Carney's Point, of which 194 moved from Retsof. The routes of movement to Carney's Point were: From Retsof, Genesee & Wyoming and New York Central to Canandaigua, N. Y., thence Pennsylvania to destination, 462 miles,

¹ This report also embraces No. 11622, Sub-No. 1, Same v. Same.

or Genesee & Wyoming to Retsof Junction, N. Y., and Pennsylvania beyond, 500 miles; from Ithaca and Ludlowville, Lehigh Valley to Phillipsburg Junction, Pa., and Pennsylvania beyond, 355 and 361 miles, respectively; from Watkins, Pennsylvania throughout, 371 miles. The shipments to Gibbstown and Paulsboro moved over the same routes as shown above, the total distances being slightly less. Charges were collected at the applicable rates, constructed originally on the basis of a 5-cent arbitrary over the commodity rates to Philadelphia.

During the period of shipment the Philadelphia rates were as follows: 12.6 cents prior to the increases resulting from our order of March 12, 1918, in *The Fifteen Per Cent Case*, 45 I. C. C., 303, and 14.5 cents thereafter and until June 25, 1918, when they became 18 cents. Subsequent to the filing of these complaints the defendants agreed to establish a rate of 28 cents to the destinations involved, constructed by adding 2 cents to the 18-cent rate to Philadelphia and increasing the resulting rate by 40 per cent as authorized in *Increased Rates*, 1920, 58 I. C. C., 220. This is satisfactory to complainants, and the rate has now been established by all defendants except the New York Central. During the respective rate periods the rates charged on the shipments to Carney's Point from Retsof via the longer route yielded earnings of approximately 27, 31, and 39 cents per car-mile, based on the average loading of 77,467 pounds per car, and ton-mile earnings of 7, 8, and 10 mills; by the shorter route, approximately 29.5, 33, and 42 cents per car-mile and 7.5, 8.5, and 10.5 mills per ton-mile; and from the other points of origin approximately 38, 43, and 50 cents per car-mile.

Common salt is the basis of muriatic acid, which is used extensively in the manufacture of dyes. Complainant's principal competitor is located at Marcus Hook, Pa. The haul from the salt wells to Marcus Hook is about 40 miles less than to Carney's Point. Other competitive points are Philadelphia, Pa., Wilmington, Del., and Baltimore, Md. During the periods when these shipments moved the Philadelphia rates were applicable to all of these competitive points, and to Camden and generally to Westville, N. J., on the main line of the West Jersey.

Complainant seeks reparation on the basis of a 2-cent arbitrary over the Philadelphia rates, contending primarily that the 5-cent arbitrary was excessive when the extra mileage involved is compared with the length of haul comprised in the Philadelphia rates. A number of exhibits were submitted to show that the earnings under the rates constructed on the basis of a 2-cent arbitrary would compare favorably with the earnings under the rates contemporaneously maintained from numerous salt-shipping points in Ohio and New York to

Marcus Hook and the other competitive points. Complainant also points to the fact that a 2-cent arbitrary was in effect on most of the outbound traffic.

Defendants assert that the method of constructing the rates assailed had been long in effect; that Philadelphia is a natural gateway and market, and as Camden and Westville are located on the Delaware River near by, they are a part of the same gateway; that the rates on outbound traffic are not comparable, as they were established in order that industries located in New Jersey might reach a common market for their finished product; that Marcus Hook is on the main line of the Pennsylvania between Philadelphia and Baltimore, while, on the other hand, complainant's plants are on a branch line of the West Jersey, and shipments thereto involve an additional line-haul carrier; that the West Jersey has a much lighter traffic density than the Philadelphia-Baltimore division or the Pennsylvania eastern lines taken as a whole; that less than one-third of the traffic on the West Jersey is freight traffic; that the service to Carney's Point involved a substantial movement outbound of empty cars; and that for the period during which the shipments moved, the West Jersey showed an operating deficit.

Generally speaking, blanket rates apply on salt between points in the territory here involved, both origin and destination points being grouped. There is no evidence of record to indicate that the destination points were improperly grouped or that the through rates to this group yielded excessive returns.

We find that the rates assailed were not unreasonable; that any undue prejudice which may have existed has now been removed; and that complainant has not shown that it has been damaged by reason of the alleged undue prejudice.

An order will be entered dismissing the complaint.

No. 11923.

FORSYTHE LEATHER COMPANY

v.

DIRECTOR GENERAL, AS AGENT, CHICAGO, MILWAUKEE
& ST. PAUL RAILWAY COMPANY, ET AL.

Submitted May 17, 1921. Decided July 23, 1921.

Rate on glue stock, in carloads, from Wauwatosa, Wis., to Carrollville, Wis., during the period of federal control, found not unreasonable, but found to have been unduly prejudicial. * Reparation denied, complaint dismissed.

F. M. Elkinton, F. H. Cogswell, and Ralph Merriam for complainant.

J. F. Finerty, J. N. Davis, and O. W. Dynes for defendants.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND ESCH.

BY DIVISION 2:

Exceptions were filed by complainant to the report proposed by the examiner, and oral argument was had thereon.

Complainant, a corporation engaged in the manufacture of leather at Wauwatosa, Wis., in the Milwaukee switching district, alleges that the applicable joint class-D rates of 7 cents prior to August 26, 1920, and 9.5 cents thereafter, minimum 36,000 pounds, charged on 41 carloads of glue stock from Wauwatosa to Carrollville, Wis., between September 28, 1918, and September 1, 1920, were unreasonable, unjustly discriminatory, and unduly prejudicial to the extent that they exceeded 2.5 cents and 3.5 cents, respectively. Reparation is asked. Rates herein are stated in cents per 100 pounds.

The shipments were consigned to the United States Glue Company at Carrollville, and moved over the Chicago, Milwaukee & St. Paul, hereinafter styled defendant, to Milwaukee and thence over the Chicago & North Western, hereinafter called the North Western, to destination.

Prior to August 26, 1920, a combination rate of 2.5 cents applied from other districts in the Milwaukee switching district, as described in defendant's switching tariff, to Carrollville, composed of defendant's switching rate of 1 cent, minimum 50,000 pounds, to its connection with the North Western, plus a commodity rate of 1.5 cents, minimum charge \$9 per car, to destination. These factors were increased on that date to 1.5 cents and 2 cents, respectively. The tariff increasing

the latter factor is not on file with this Commission. Effective January 10, 1921, defendant's switching rate was made applicable from Wauwatosa to its connection with the North Western, making the combination rate to Carrollville the same as applies from other parts of the Milwaukee switching district.

Wauwatosa is situated on defendant's La Crosse division, approximately 2.6 miles west of the limits of its Milwaukee terminals. Defendant's switching tariff names 13 districts, including Wauwatosa, as comprising the Milwaukee switching district, and the industries in those districts to and from which its switching rates apply. While complainant is included among the industries so named, the switching rates were not applicable from Wauwatosa to defendant's connection with the North Western when complainant's shipments moved, although they applied between Wauwatosa and other districts named in the tariff, of which those mentioned of record are Chestnut street, Gibson, North Milwaukee, Reed street, and Stowell. The distances from these districts, except Reed street, to Carrollville, are, respectively, 27, 23.5, 20.8, and 15 miles, as compared with 17.5 miles from Wauwatosa. The distance from Reed street is not shown but is said to be less than from the other districts. Tanneries located in these districts ship glue stock to the United States Glue Company at Carrollville. Complainant's shipments average about two cars per month. The prices it received during the period in issue ranged from 1.5 to 3.5 cents per pound.

Complainant's evidence on the question of reasonableness, in addition to the showing that the rate from Wauwatosa was subsequently reduced, consists mainly of comparisons of the rates and distances from Wauwatosa and from the other Milwaukee switching districts to Carrollville.

In handling complainant's traffic, defendant employs three switching operations and a road haul to effect delivery to the North Western. The cars are switched from complainant's plant to the pick-up track near the station at Wauwatosa, a distance of about one-half mile. From this track they are picked up by the way freight and carried to defendant's Blue Mound yard in the Milwaukee terminals. The train is then taken by a switch engine to the classification yard, from which cars for the North Western are switched over a track owned jointly by defendant and the North Western and delivered to the latter at its Mitchel yard. Switching over this joint track is performed alternately by months by the two roads. On the other hand, only one movement apparently is required to deliver traffic from the Chestnut street district, principally referred to of record, to the classification yard. Cars from this district are handled in "drags," of which from two to four are operated during each 24-hour period. The

comparatively long haul from the Chestnut street district is due to the fact that the traffic must be hauled in a northwesterly direction to North Milwaukee and thence south over defendant's northern division, past the connection with the line from Wauwatosa, to the classification yard, a distance of between 15 and 16 miles.

It is testified for defendant that its reciprocal switching rates were established after a thorough investigation by the Wisconsin commission, which did not require their establishment from Wauwatosa; that these rates are too low for the service performed; and that they never applied from Wauwatosa on traffic for the North Western except during a short period in 1916 and 1917, when they were published through error, upon discovery of which they were withdrawn under authority granted by the state commission. It is asserted that the class-D rate assailed, which applied throughout the state for two-line hauls of 20 miles in the absence of commodity rates, was low for application on this traffic through the Milwaukee terminals, and as compared with similar rates contemporaneously in effect in the same general territory. In comparison defendant cites, among others, two-line distance rates of 10.5 cents and 7 cents for intrastate movements in Illinois and Iowa; zone-A rates of 9.5 cents fifth class and 8 cents sixth class, and zone-B rates of 10.5 cents fifth class and 8.5 cents sixth class for like distances in central freight association territory, where glue stock is rated sometimes fifth class and sometimes sixth class; and the class-D rate of 10 cents, as increased under general order No. 28 of the Director General of Railroads, prescribed in *The Missouri River-Nebraska Cases*, 40 I. C. C., 201.

Counsel for complainant in effect urges upon exceptions and argument that we should confine ourselves to a comparison of the rate assailed with the industrial and interchange switching rates which were in effect in the Milwaukee switching district and the through rates accorded to complainant's competitors in this district. He asserts that comparisons with rates for rural hauls of equal distance are improper, apparently assuming that the cost for movement through large terminals is less. With these contentions we can not agree. Competitive and other conditions have served to bring about very low switching charges at industrial centers. In *Switching Charges at Milwaukee, Wis.*, 32 I. C. C., 509, it was shown that a rate of 1 cent, minimum 60,000 pounds, barely covered, if in fact it did cover, the cost of reciprocal switching in the Milwaukee district in 1914. Operating expenses and other items of cost have materially increased since that time. It is evident that the 1-cent rate, minimum 50,000 pounds, which complainant seeks to have us consider as a reasonable charge for the movement from Wauwatosa to point of interchange with the North Western, together with the equally

low commodity rate over that line, were depressed rates. The joint class-D rate assessed represents a rate established by the state commission for general application and must be considered, in the absence of any evidence to the contrary, as the normal rate to have applied on this traffic.

We find that the rate assailed was not unreasonable during the period of federal control, but that it was unduly prejudicial to complainant and unduly preferential of tanneries located in other parts of the Milwaukee switching district to the extent that it exceeded 2.5 cents per 100 pounds. No evidence of unjust discrimination was submitted, and proof of damage was not shown with sufficient definiteness to entitle complainant to an award of reparation under our finding of undue prejudice.

The complaint will be dismissed.

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No. 11413.

ATLAS PORTLAND CEMENT COMPANY

v.

GRAND TRUNK RAILWAY COMPANY OF CANADA,
DIRECTOR GENERAL, AS AGENT, ET AL.

Submitted April 2, 1921. Decided September 23, 1921.

Rates on cement, in carloads, from Hudson, N. Y., to certain New England destinations not shown to be unreasonable or otherwise unlawful. Complaint dismissed.

Frank Lyon for complainant.

Parker McColleston for defendants.

W. F. Clark for Lehigh Portland Cement Company, intervener.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS *McChord, Meyer, Aitchison, and Lewis.**MEYER, Commissioner:*

Exceptions were filed by complainant to the report proposed by the examiner.

Complainant owns and operates a cement mill at Hudson, N. Y. By complaint, filed April 20, 1920, it alleges that the rates on cement, in carloads, from Hudson to certain New England destinations are unjust and unreasonable, and that the rates from Montreal, Canada, to the same destinations unduly prefer shippers from Montreal, in violation of sections 1 and 3 of the interstate commerce act. We are asked to prescribe reasonable and nonprejudicial rates for the future and to award reparation. Rates hereinafter will be stated in amounts per ton, and are those in effect prior to the general increases authorized by us on July 29, 1920, unless otherwise indicated.

The Lehigh Portland Cement Company, which has mills in the Lehigh cement district of Pennsylvania, intervened in opposition to the complaint.

Early in 1920, mills in the United States were finding it difficult to supply the unusual demand for cement, and intervener was unable to produce sufficient to fill its existing contracts. The Canada Cement Company, at Montreal, expected to have a large surplus and to overcome its shortage, intervener purchased cement from that company for shipment into New England.

Prior to April 15, 1920, the sixth-class rate applied on cement from Montreal to New England. That rate was \$5.40 to the destination territory involved herein. To market cement upon that rate was a commercial impossibility, and a joint application for reduced-rate authority was made by the carriers to meet this emergency. Effective April 15, 1920, the Canadian Pacific and Grand Trunk railways published through commodity rates from Montreal to Boston, Mass., of \$3 and to Portland, Me., of \$2.90. These rates were made maxima to points directly intermediate via the several routes named in the tariffs. Under the Grand Trunk tariff the Boston rate applied either via St. Johns, Quebec, Central Vermont Railway, White River Junction, Vt., and Boston & Maine, or via Sherbrooke, Quebec, and Boston & Maine; and the Portland rate applied via Grand Trunk direct. Under the Canadian Pacific tariff the Boston rate applied via Newport, Vt., and connections; and the Portland rate via Newport, Boston & Maine, St. Johnsbury, Vt., and Maine Central. Notwithstanding complainant's protest, these reduced rates were allowed to become effective. On August 9, 1920, under authority of another reduced-rate order, the application of the Boston rate was extended to all destinations on the Boston & Maine taking the Boston rate basis. At the hearing, the complaint was amended to include these additional destinations; and reparation is also asked on shipments moving thereto within two years prior to the amendment. Effective August 26, 1920, following the increases authorized on July 29, 1920, the Boston rate was increased to \$4.20 and the Portland rate to \$4.06.

A 50,000-pound minimum applies from Hudson. From Montreal the minimum is 60,000 pounds for cars 36½ feet and under, inside measurement, unless the marked capacity of the car is less, in which case the minimum is the marked capacity, but not less than 30,000 pounds; if cars of greater length are used, the minimum increases 5 per cent per foot.

The Canada Cement Company is located at Kilburn Siding on the tracks of the Canadian National Railways, and a switching charge of \$10, equivalent to about 30 cents a ton, is assessed for moving cars to the tracks of the Grand Trunk and the Canadian Pacific railways, which is not absorbed. Complainant moves its cars approximately 2 miles from its plant to its connections with the Boston & Albany and New York Central railroads at its own expense.

The basis used in making the rate from Montreal to Boston was the rate to Boston from the Lehigh district. The American carriers joined the Canadian carriers in the application for the Montreal rate with the definite understanding that any change made in the rate to Boston from the Lehigh district would be reflected by a change in

the rate from Montreal to Boston. The spread between the rates from the Lehigh district and the rates from Hudson to the destinations here in question, as well as the reasonableness of the latter rates, was in issue in *Atlas Portland Cement Co. v. C. V. Ry. Co.*, 63 I. C. C., 420, and in that case we found that the rates as a whole from Hudson were not unreasonable and did not subject Hudson to undue prejudice and disadvantage or give to the Lehigh district an undue preference and advantage.

The mileage from Montreal to Boston and Boston rate group points is substantially the same as the mileage from the Lehigh district to Boston and points which carry the Boston rate. The rate from the Lehigh district applies over a blanket extending as far back as New Rochelle, N. Y. The \$3 rate from Montreal applies to points ranging from 30 to 57 miles east of Montreal to Boston, which is 326 miles via the shortest route and 405 miles via the longest from Montreal. This blanket is the same as the destination blanket on class rates.

The following table is compiled from an exhibit introduced by defendants comparing short-line mileages, and rates to representative destinations, increased on August 26, 1920:

To—	Distance from Hudson.	From Hudson district.		From Montreal.		From Lehigh district (Northampton).	
		Average distance.	Rate.	Distance.	Rate.	Distance.	Rate.
	<i>Miles.</i>	<i>Miles.</i>		<i>Miles.</i>		<i>Miles.</i>	
Greenfield, Mass.....	101	127	\$3. 36	273	\$4. 20	291	\$4. 20
Springfield, Mass.....	137	163	3. 36	309	4. 20	255	4. 20
Keene, N. H.....	139	165	3. 64	248	4. 20	329	4. 20
Fitchburg, Mass.....	157	183	3. 64	289	4. 20	347	4. 20
Worcester, Mass.....	168	194	3. 64	307	4. 20	345	4. 20
Lawrence, Mass.....	200	226	3. 64	300	4. 20	382	4. 20
Boston, Mass.....	207	233	3. 36	326	4. 20	377	4. 20
White River Junction, Vt.....	188	214	4. 06	186	4. 20	378	4. 62
Nashua, N. H.....	189	215	4. 06	291	4. 20	371	4. 62
Concord, N. H.....	201	227	4. 06	256	4. 20	391	4. 62
Manchester, N. H.....	201	232	4. 06	274	4. 20	388	4. 62
Laconia, N. H.....	229	255	4. 06	244	4. 20	419	4. 62
Portland, Me.....	279	305	4. 06	287	4. 06	461	4. 62
Norwich, Vt.....	192	218	4. 76	190	4. 20	382	5. 32
St. Johnsbury, Vt.....	249	275	4. 76	157	4. 20	439	5. 32
St. Albans, Vt.....	347	284	{ 5. 18 1 4. 76 }	69	4. 20	495	5. 32

¹ Rate to Boston & Maine contiguous territory.

The Hudson rates to points on the Boston & Maine and Maine Central apply also from Howes Cave, Glens Falls, and Alsen, N. Y. The distances from these points are within about 10 miles of the distance from Hudson via the New York Central and Troy. From Alsen to Boston & Maine destinations the distance is more than 30 miles greater than from Hudson via the Boston & Albany and North Adams. From Hudson to these destinations via the Boston & Albany and

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North Adams the distance is 18 miles less than via Troy. To some destinations, such as Boston, Springfield, and Worcester, Mass., Boston & Albany one-line rates apply which are lower than those via the Boston & Maine.

Complainant urges that the class-rate scales prescribed for New England in *Proposed Increases in New England*, 49 I. C. C., 421, approximate the class scales in central freight association territory, and contends that, as to a considerable extent commodities move in that territory on percentages of class rates, commodity rates in New England should be constructed in the same way. Cement rates from Montreal to Boston & Maine stations taking the Boston rate basis are 55 per cent of sixth class. Complainant's exhibits show that the rates from Hudson to these same destinations range from 70 to 100 per cent of sixth class. As hereinbefore shown, the class rates, as well as the rates on cement from Montreal, are blanketed for considerable distances, and the carriers contend that the rates from Montreal to Boston, Portland, and intermediate points are reasonable. Complainant's witness did not agree that those rates are reasonable to the intermediate points, but was unable to indicate at what points short of Boston and Portland he believed the rates became unreasonable. In *Atlas Portland Cement Co. v. C. V. Ry. Co.*, *supra*, we found that the making of rates on cement a percentage of the class rates was not practicable.

In *Proposed Increases in New England*, *supra*, we divided New England into two parts according to traffic density, class A being heavy density and class B light. A distance scale of class rates was provided on traffic moving between points of origin and destination in class-A territory, and a scale 10 per cent higher on traffic moving between points in class-B territory or from points of origin in class-A territory to destinations in class-B territory, or vice versa. That proceeding did not include commodity rates, nor did it embrace traffic moving from Canada or from Hudson via the New York Central. Complainant asks that the principles underlying these class rates be applied to commodity rates on cement. On the assumption that the \$3 rate from Montreal to Boston is considered a reasonable rate by the carriers for the 326-mile haul through class-B territory, complainant asserts that a rate from Hudson to a given station in class-B territory should be the same percentage of that \$3 rate as the sixth-class rate to that station from Hudson is of the sixth-class rate for 326 miles in class-B territory. A similar formula was suggested for class-A territory rates.

No evidence was adduced as to the volume of traffic from Montreal to Portland and Boston under the \$2.90 and \$3 rates. Complainant submitted exhibits designed to show the number of carloads of cement

delivered by the Boston & Maine during the year 1919 in class-A and class-B territory. While complainant conceded that it is not proper to use average car-miles of shipments moving prior to the effective dates of the rates from Montreal when no cement moved therefrom into New England, it submitted a number of computations based thereon.

As heretofore stated, the Grand Trunk joined in the \$3 rate to Boston. Its haul through Portland is 405 miles. Groveton, N. H., is 402 miles from Hudson via Portland. Under these circumstances complainant urges that it should not be required to pay more than \$3 to stations on the Grand Trunk south of Groveton, to and including Portland.

Complainant compares its rate of \$3.70 to stations on the Central Vermont north of White River Junction with the \$3 rate from Montreal to the same destinations. The carriers propose to reduce this rate from Hudson to the level of the rate to contiguous territory on the Boston & Maine.

The rate from Hudson to Boston of \$2.40 is 60 cents, or approximately 12 cents per barrel, less than the \$3 rate from Montreal. This spread was increased to 84 cents, or approximately 16 cents a barrel, under the increases of August 26, 1920. The record does not show whether complainant lost any business by reason of the movement of cement from Montreal or whether it had to reduce its price to meet competition with the Montreal cement.

Complainant cited the rates prescribed by us in *Western Cement Rates*, 48 I. C. C., 201, and in *Allentown Portland Cement Co. v. B. & O. R. R. Co.*, 49 I. C. C., 502. The rates prescribed in the latter case were from Troy, which is not a cement-producing point, to Boston & Maine destinations, a one-line haul. In the same case we had under consideration most of the Hudson rates here under attack, but did not find them unreasonable.

Upon this record we are of opinion and find that the rates assailed are not unreasonable or otherwise unlawful. The complaint will be dismissed.

INVESTIGATION AND SUSPENSION DOCKET NO. 1175.

COFFEE FROM GALVESTON, TEX., AND OTHER GULF PORTS.

Submitted August 18, 1921. Decided September 28, 1921.

Upon further consideration, the findings in our previous report, 58 I. C. C., 716, respecting rates on coffee from the Gulf ports to middle western territory, modified.

R. G. Merrick and *G. B. Ross* for Atchison, Topeka & Santa Fe Railway Company, Gulf, Colorado & Santa Fe Railway Company, and Panhandle & Santa Fe Railway Company; *F. H. Wood*, *J. R. Bell*, and *J. H. Talichet* for Morgan's Louisiana & Texas Railroad & Steamship Company, Louisiana Western Railroad Company, Lake Charles & Northern Railroad Company, Texas & New Orleans Railroad Company, Galveston, Harrisburg & San Antonio Railway Company, Houston & Texas Central Railroad Company, Houston East & West Texas Railway Company, and Houston & Shreveport Railroad Company; *C. A. Stang* for Illinois Central Railroad Company and Yazoo & Mississippi Valley Railroad Company; *Horace Booth* for International & Great Northern Railway Company; and *T. J. Norton*, *C. S. Burg*, *H. C. Herbel*, *A. B. Enoch*, and *F. E. Andrews* for all respondents.

E. H. Thornton and *H. B. Cummins* for Galveston Commercial Association; *Carl Giessow* and *Edgar Moulton* for New Orleans Joint Traffic Bureau; and *C. D. Mowen* for Fort Smith Traffic Bureau and Little Rock, Ark., Board of Commerce.

REPORT OF THE COMMISSION ON FURTHER HEARING.

EASTMAN, Commissioner:

To the report proposed by the examiner exceptions were filed by protestant New Orleans Joint Traffic Bureau and by respondents. We have reached conclusions differing from those which he recommended.

In May, 1920, upon protests filed by various organizations we suspended certain proposed rates on green and roasted coffee, in carloads, from Galveston and other Texas ports to Memphis, Tenn., Vincennes, Ind., Sioux Falls, S. Dak., and points in Louisiana, Arkansas, Oklahoma, Missouri, Kansas, Nebraska, Iowa, Minnesota,

Wisconsin, and Illinois; and also from New Orleans, La., and other Gulf ports taking the same rates, to Sioux Falls and certain other points in South Dakota, and to points in Arkansas, Oklahoma, Missouri, Kansas, and Nebraska, and to New Castle, Wyo. The case was decided in September, 1920, *Coffee from Galveston and Other Gulf Ports*, 58 I. C. C., 716, and we required the suspended rates to be canceled without prejudice to the filing of new tariffs publishing rates in accordance with our findings.

The record contains little evidence in regard to the rates on roasted coffee, which seldom moves in carload quantities. Only the rates on green coffee were considered in the original report or will here be considered. They will be stated in cents per 100 pounds.

New York and New Orleans are the two ports through which is imported most of the coffee consumed in this country. After a bitter rate war between the eastern and Mississippi Valley carriers the rate from New Orleans to Chicago was in 1905 made the same as the rail-and-lake rate from New York to Chicago. It appears also that an adjustment between the rates from New York and the rates from New Orleans to points in the destination territory here considered was at length established which proved satisfactory both to the carriers and to the ports. Rates from Galveston and other Texas ports were in general made the same as the rates from New Orleans, although in no inconsiderable number of instances the rates from the Texas ports were higher.

This adjustment was disrupted as the result of the increases authorized in *The Five Per Cent Case*, 31 I. C. C., 351, 32 I. C. C., 325, and in *The Fifteen Per Cent Case*, 45 I. C. C., 303, which applied to the rates from New York but not to the rates from the Gulf ports; and this disruption was accentuated by the 25 per cent increase authorized by general order No. 28 of the Director General of Railroads. Because of complaints from importers at New York, and with a view to restoring the former relationship, on February 20, 1920, the rates from New Orleans to Chicago, Memphis, St. Louis and Springfield, Mo., Fort Scott, Kans., points on and east of the Mississippi River and on and north of the Ohio River, Missouri River points, and certain points in Iowa, Wisconsin, and Minnesota were increased 20 cents, or approximately that amount, over the rates in effect on June 24, 1918.

To complete the restoration of the former relationship between the Gulf ports and New York, respondents proposed, in the suspended schedules which were considered in our previous report, to bring the rates from Galveston and other Texas ports to the level of the rates from New Orleans, which had been raised on February 20, 1920, and to increase the rates from both New Orleans and Gal-

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veston 20 cents, or approximately that amount, over the rates in effect on June 24, 1918, to numerous other points, principally in Arkansas, Oklahoma, Kansas, and Nebraska.

In our previous report we found, at page 727—

that the proposed rates, while not intrinsically unreasonable, are unduly prejudicial to New Orleans and the other Gulf ports to the extent that they exceed the rates in effect on June 24, 1918, by more than the total increases in the corresponding rates from New York since and including that authorized in *The Five Per Cent Case*, *supra*, and unduly prejudicial to the Texas ports to the extent that they exceed the corresponding rates from New Orleans, and have not been justified; but that rates conforming to the following relationship will not be unduly prejudicial: The rates from the Texas ports to all the territory of destination should be increased so as to restore the relationship with New York existing prior to the increases authorized in *The Five Per Cent Case*, and the rates from New Orleans should be the same as the corresponding rates from the Texas ports.

An impelling reason for this finding was the fact, undisputed on the record, "that prior to the increases in the rates from New York to Chicago, Mississippi River points, and points related thereto authorized under *The Five Per Cent Case*, the relationship between New York and New Orleans into the western and southwestern territory was generally satisfactory to the carriers and to the shippers of coffee." Our finding, however, was qualified in the following important respect:

The rates by way of the direct lines from each Gulf port must conform to the long-and-short haul provision of the fourth section of the interstate commerce act. Lines that are more circuitous than the direct lines by at least 15 per cent may meet the rates of the direct lines at competitive points, provided the rates to intermediate points which are not more distant than are the competitive points by the direct line shall not exceed the rates to the competitive points.

In attempting to comply with our finding, respondents found it impossible to establish the previously existing relationship between New York and the Gulf ports without complete relief from the long-and-short-haul provision of the fourth section. The qualification, above quoted, largely nullified the apparent intent of the finding. This may be illustrated by the rates from Galveston to Chicago as the farther distant point, and to Kansas City as an intermediate point. The direct line from Galveston to Chicago is through Little Rock, Ark., and St. Louis, 1,148 miles. Through Kansas City the distance is 1,260 miles, less than 11 per cent in excess of the direct line. Accordingly our previous report required compliance with the fourth section over the Kansas City route as well as over the direct line. Prior to *The Five Per Cent Case*, the rate from Galveston to Chicago was 25 cents, the same as the rate from New Orleans, which in turn met the rail-and-lake rate of 25 cents from New York. To Kansas City the rate from Galveston was 35 cents,

and the rate from New York 43 cents. The present rate from New York to Chicago, all rail, is 63 cents, and rail and lake 57.5 cents; to Kansas City, all rail, it is 85 cents. To maintain the same rate from the Gulf ports to Chicago as is in effect from New York, either all rail or rail and lake, and to restore the previously existing relationship at Kansas City would result in a higher rate to that point than to Chicago. There are many such situations.

The case was reopened for further hearing, which was held at Galveston in April, 1921. Little additional evidence was submitted. Respondents contend that to require compliance with the fourth section would unduly reduce their revenues. Because of traffic conditions, market competition, and the fact that the relationship which existed for a number of years was generally satisfactory, they urge that full relief from the fourth section be granted. Protestants agree that this should be done, except that some express the view that the rate to Kansas City should not be exceeded at points in Oklahoma.

As bearing upon market competition, it appears that Chicago is the largest consuming and distributing market for coffee in the territory here considered, and that both the shippers and the carriers are insistent upon reaching that market upon as near a rate parity with New York as possible. Aside from rates, New York has a substantial advantage, it is stated, by reason of the fact that larger stocks of coffee are maintained at that port and a greater variety of grades, and that the prices are usually somewhat lower than at the Gulf ports. With respect to the extent of New York competition at the Missouri River, it is stated that in 1917 4,668 tons moved from New York to Kansas City, St. Joseph, Atchison, and Leavenworth, and 6,315 tons from New Orleans; and that to the territory west of St. Louis, as a whole, the traffic was divided substantially equally between New York and New Orleans.

Coffee is rated fifth class in all three classifications. As showing the influence of market competition, respondents point to the fact that from New York the rates are, in general, on that basis, while from the Gulf ports they are materially less than the fifth-class rates. Thus, the current fifth-class rate from New Orleans to Chicago is \$1.09, and to Kansas City \$1.19. The commodity rate in effect on coffee from New Orleans to Chicago is 60 cents, 2.5 cents higher than the rail-and-lake rate from New York and 3 cents under the all-rail rate, while from New Orleans to Kansas City the coffee rate is 74.5 cents.

The fact, however, that keen market competition exists which has influenced the making of the rates in the past and the further fact that respondents and protestants are practically agreed that

complete fourth section relief should be granted are not in themselves sufficient to justify such action on our part. It is necessary to consider not only the letter but the spirit of the law and the interests of the destination territory. The tendency of both Congress and the Commission in recent years has been to restrict more and more the granting of fourth section relief. By the transportation act, 1920, it is provided that if authority is granted a circuitous line, because of such circuitry, to meet the charges of a more direct line at competitive points and to maintain higher charges at intermediate points, "the authority shall not include intermediate points as to which the haul of the petitioning line or route is not longer than that of the direct line or route between the competitive points." While this limitation does not apply in terms to relief granted because of market competition, we have felt that in exercising our discretion under the law the same principle should be applied to cases of market competition, believing that the same reasons for such a limitation exist in the one case as in the other. The whole adjustment of rates in the Mississippi Valley has been before us in the past two years and all fourth section relief over direct lines between New Orleans and points north thereof both east and west of the Mississippi River has been denied. To grant the relief now requested with respect to the rates on coffee would, therefore, be inconsistent with the policy which has been pursued with respect to other rates in the same territory and would, in our opinion, be inconsistent with the spirit and intent of the law.

Our original finding that the relationship in coffee rates which existed prior to *The Five Per Cent Case* between New York on the one hand and the Gulf ports on the other should be restored, was predicated largely upon the fact that the parties to this proceeding, both carriers and shippers, were in general agreement that this should be done. But since the restoration can not be accomplished without entire disregard of the qualification which was attached to our finding and the granting of complete fourth section relief, it becomes necessary to consider the situation again.

At both the original and the further hearing the Texas ports urged that they are entitled to lower rates than New Orleans to certain points, largely in Oklahoma and Kansas, where the distance from the Texas ports is less; and respondents Atchison, Topeka & Santa Fe and International & Great Northern also expressed this view. In our former report we pointed out that if this principle were followed the rates from New Orleans would be lower than the rates from Galveston to a considerable portion of the territory along the Mississippi River and in Illinois; and we held that the rates from the Texas ports to the destination territory in question should

be the same as the rates from New Orleans, extending the parity even to points in eastern Arkansas where it has not hitherto prevailed and where New Orleans has an advantage in distance.

This conclusion was based upon the belief that the advantages of a rate parity would on the whole be evenly balanced as between the various ports, and it was also influenced by the fact that this has been, in general, the adjustment followed in the past. It appears, however, that on a number of commodities the competitive situation from Galveston and New Orleans has been adjusted by equalizing the rates from the two ports at Missouri River points and in the territory immediately east and west of the Arkansas-Oklahoma and Kansas-Missouri state lines, by establishing a comparatively small differential, New Orleans over Galveston, in the territory west of that just described, and by establishing a corresponding differential, Galveston over New Orleans, in the territory east thereof as far as the Mississippi River and Chicago. Such a plan, as well as a general rate parity, would be nonprejudicial as between the two ports; and it would be in harmony with the adjustment which the Texas protestants seek, for they can not fairly expect a differential in their favor at Oklahoma and Kansas points without a corresponding differential in favor of New Orleans in the territory where that port has the advantage in distance.

As stated above, the rates from New Orleans to many of the destinations in question were increased by approximately 20 cents in February, 1920, but the rates from the Texas ports were not so increased. The proposed increases from the latter to these same destinations were suspended in this proceeding, and for this reason the present rates from the Texas ports in a number of instances are substantially lower than the present rates from New Orleans. However, respondents have expressed themselves as willing that we should consider the adjustment as a whole unrestricted in any way by the fact that from New Orleans the increased rates have already, in many cases, become effective.

In our judgment, the alternative method suggested above for dealing with the adjustment between the Texas ports and New Orleans would remove much of the difficulty which is now encountered in connection with the fourth section, for relief is not sought in the case of the direct lines from New Orleans to Chicago and, so far as direct lines are concerned, it is chiefly the rates from the Texas ports which make this issue important. Upon reconsideration of the record, therefore, we find:

1. That we should adhere substantially to the finding in our original report with respect to fourth section relief from the Gulf ports. Such relief will be denied, subject to the following excep-

tions: (a) Lines whose routes are not less than 15 per cent longer to a common destination than the direct route from the same Gulf port will be granted relief, with the limitation that the authority shall not include intermediate points as to which the haul of the line which is granted relief is not longer than that of said direct route to the common destination; nor shall the rate to any intermediate point exceed the lowest combination. (b) Lines whose routes are not less than 15 per cent longer to a common destination than the direct route from another Gulf port will be granted relief, with the limitation that the authority shall not include intermediate points as to which the haul of the line which is granted relief is not longer than that of said direct route to the common destination; nor shall the rate to any intermediate point exceed the lowest combination.

2. That where the distances from New Orleans and Galveston do not differ by more than 100 miles the rates should be the same, and where the difference is in excess of that distance differentials favoring the port which has the advantage in distance may be established, properly graded and not exceeding 7 cents. In applying the above basis, minor deviations may be made for the purpose of avoiding fourth section departures which would result from a rigid observance, but in case of such deviations care should be taken to avoid undue preference of one port to the disadvantage of the other.

3. That there is nothing in the record to justify any change in the present rates of 47 and 57.5 cents per 100 pounds from New Orleans to Memphis and St. Louis, respectively.

4. That the rail-and-lake rate from New York to Chicago need not be made the measure of the rate from New Orleans to Chicago. In no case have we required rail lines to meet water-and-rail rates. The rail-and-lake rates from New York are not used during the winter months and much of the traffic moves all rail even when the water routes are open.

5. That the carriers have justified an increase in the present rate from the Texas Gulf ports to lower Missouri River points, St. Joseph to Kansas City, Mo., inclusive, to 69.5 cents per 100 pounds and that the rate from New Orleans to those points should not be higher than from Galveston.

6. That respondents have justified a rate from New Orleans to Little Rock, Ark., not in excess of 55 cents per 100 pounds.

7. Except in so far as modified by or inconsistent with these findings, our former findings stand confirmed.

These findings will, in our judgment, supply the key rates around which may be built the entire adjustment. Rates complying therewith should be filed within 30 days from the service of this report. An order granting the relief above indicated from the provisions of the fourth section will be entered.

No. 11028.

LAKE SUPERIOR PAPER COMPANY, LIMITED, ET AL.,

v.

DIRECTOR GENERAL, AHNAPEE & WESTERN RAILWAY
COMPANY, ET AL.

Decided September 28, 1921.

Original report and order herein, 61 I. C. C., 709, modified upon petition for interpretation and construction thereof, filed by certain of the defendant carriers.

Appearances same as in original report.

SUPPLEMENTAL REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

EASTMAN, *Commissioner*:

In our original report in this case, 61 I. C. C., 709, we found that the relationships of the rates on newsprint paper, in carloads, from Sault Ste. Marie, Ontario, Fort Frances, Ontario, International Falls, Minn., and points in the groups therein referred to as the Fox River group, northern Wisconsin group, and Minnesota group to destinations in the west and southwest were unduly prejudicial to complainants located at Sault Ste. Marie and unduly preferential of their competitors having plants in the other groups or at the points mentioned. Differentials were prescribed which were designed to remove the undue prejudice and preference found to exist. Subsequently a number of carriers, parties defendant, filed a petition for an interpretation and construction of the report and order, stating that differences of opinion had arisen between them and other defendants and Fort Frances and International Falls interveners as to the intent of the order, and also directing attention to certain difficulties which, in their opinion, prevent the publication of the rates on the basis prescribed. Complainants and the Minnesota & Ontario Paper Company and Fort Frances Pulp & Paper Company, interveners, have submitted briefs setting forth their views.

The first point in controversy is whether it was our intent that the prescribed differentials should be regarded as minima as well as maxima and, therefore, should be published in the precise amounts stated in the order, using the Fox River group rates as the base rates; or whether they should be regarded as maxima only, permitting the

publication of differentials in less amounts if that should seem desirable.

The opening paragraph of the report states "this case brings in issue the propriety of the relationship, as between points of origin, of the carload rates on newsprint paper from Sault Ste. Marie, Ontario, hereinafter called the Soo, Fort Frances, Ontario, and shipping points in Wisconsin, Minnesota, and the upper peninsula of Michigan to " various destinations in the west and southwest. While the complaint specifically attacked the relationship between the rates from Sault Ste. Marie and those from other points and groups to common markets, at the hearing the general relationship as between all producing points and groups was dealt with, and this general relationship was considered throughout the report. The order, however, provided only that the carriers should "apply * * * from Sault Ste. Marie, Ontario, * * * rates which shall not exceed the rates contemporaneously maintained by them from the points or groups named by more than the amounts shown below, subject to the increases authorized in *Increased Rates, 1920*, 58 I. C. C., 220."

In this form the order undoubtedly permits the publication of differentials from Sault Ste. Marie in amounts less than the maxima so prescribed, and this is the main contention of the International Falls and Fort Frances interveners and certain defendant carriers. The report, however, clearly contemplated that the maximum differentials would be established, using the contemporaneous Fox River group rates as the base rates, and in our judgment the establishment of lower differentials would inevitably be followed by new complaints of discrimination and undue prejudice as between the various groups. The order will be amended to provide for the establishment and maintenance of the differentials as minima as well as maxima, with the single exception noted below.

Defendants point out that to publish rates made differentially in the manner indicated will, in some instances, cause departures from the fourth section of the interstate commerce act. For example, Cedar Rapids and Davenport, Iowa, are intermediate between International Falls and Chicago by the Chicago, Rock Island & Pacific, and Dubuque, Iowa, is intermediate by the Chicago Great Western. The distance from International Falls to Chicago over the Rock Island through Cedar Rapids and Davenport is 827 miles, as compared with the short-line distance of 632 miles via West Duluth and the Minneapolis, St. Paul & Sault Ste. Marie. The distance to Chicago over the Chicago Great Western through Dubuque is approximately 740 miles. The distances over both routes exceed that over the short line by more than 15 per cent. Carriers operating circuitous routes where the distances exceed the short-line distance by more

than 15 per cent will be permitted to meet the rates of the direct routes at competitive points and maintain higher rates to intermediate points, provided the rates to the intermediate points do not exceed for like distances the rates over the direct routes to the competitive points and do not exceed the lowest combination. When made necessary by the requirements of the fourth section, differentials less than the maxima prescribed may be maintained.

Defendants further inquire as to the rates to be established on traffic destined to points beyond the Missouri River crossings and St. Louis, and as to the rates from International Falls to Sioux City, Iowa. Under the order as drawn the following differentials were prescribed on traffic to Kansas City and other Missouri River crossings and points beyond reached via those gateways: Sault Ste. Marie, 5 cents per 100 pounds over the Fox River, northern Wisconsin, and Minnesota groups, and 3 cents per 100 pounds over International Falls and Fort Frances. The differentials on traffic to St. Louis and points beyond were: Sault Ste. Marie, 5 cents over the Fox River, 4 cents over the northern Wisconsin, and 3 cents over the Minnesota group. The rates from Sault Ste. Marie and from International Falls and Fort Frances were to be the same to these points. It appears that rates to many points in the west and southwest now apply both via St. Louis and the Missouri River crossings, and the inquiry is made as to where the dividing line shall be drawn as between the destination points that will base on St. Louis differentials and those that will base on Missouri River differentials. Representative destinations are named as to which, in some cases, the short-line distances from International Falls are via Kansas City, while from other groups and Sault Ste. Marie they are through St. Louis. Generally rates from the territory of origin to points in what is known as southwestern territory are the same whether they apply through Missouri River crossings or through St. Louis, and no good reason appears why one set of differentials should apply on traffic moving through St. Louis to the southwest and another when the traffic moves through Kansas City.

With respect to the rates to Sioux City, defendants point out that in *Tribune Co. v. G. N. Ry. Co.*, 53 I. C. C., 745, we held that the rate from International Falls to Sioux City should be at least 3 cents per 100 pounds less than the contemporaneous rate to Omaha, Nebr., and no higher than the contemporaneous rate to Des Moines, Iowa. It appears that establishment of the maximum differentials now prescribed by our order herein would result in disturbance of this adjustment.

Upon consideration of this matter as it is now presented, we are of opinion that on traffic destined to points in southwestern territory,
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that is, Oklahoma, Arkansas, Louisiana west of the Mississippi River, and Texas, and including that portion of Missouri on and south of the line of the St. Louis-San Francisco extending from St. Louis through Springfield, Mo., the following differentials should be observed: Sault Ste. Marie over the Fox River group, 4 cents per 100 pounds; over the northern Wisconsin group, 3 cents per 100 pounds; over the Minnesota group, 2.5 cents per 100 pounds; and over International Falls and Fort Frances, 1 cent per 100 pounds; that to Missouri River points north of Omaha, Nebr., to and including Sioux City, Iowa, points in South Dakota and points in Nebraska to which the short routes from International Falls, Fort Frances, and the Minnesota group are through Sioux City, Iowa, or crossings north thereof the following differentials should be observed: Sault Ste. Marie over the Fox River and northern Wisconsin groups, 5 cents per 100 pounds; over the Minnesota group, 7 cents per 100 pounds; and over International Falls and Fort Frances, 6 cents per 100 pounds; and that to Missouri River points, Omaha, Nebr., to Kansas City, Mo., inclusive, and the territory west of the Missouri River in Kansas and Colorado and in that portion of Nebraska to which the short routes from International Falls, Fort Frances, and the Minnesota group are through crossings south of Sioux City, Iowa, the differentials as fixed to Kansas City, Mo., should apply. All of the above differentials are to be increased in accordance with *Increased Rates, 1920, supra*.

Differentials on traffic to points embraced in the complaint but not specifically named or included in our findings should be established in harmony with those herein prescribed.

A supplemental order will be entered giving effect to our conclusions.

No. 11490.¹

CHICAGO SAND & GRAVEL PRODUCERS ET AL.

v.

DIRECTOR GENERAL, AS AGENT, ATCHISON, TOPEKA &
SANTA FE RAILWAY COMPANY, ET AL.

Submitted April 16, 1921. Decided September 23, 1921.

1. Rates on sand, slag, and crushed stone from Joliet and Thornton, Ill., to the Chicago switching district and from and to points within the district found not unjustly discriminatory against nor unduly prejudicial to interstate transportation of sand and gravel to the district.
2. Rates on sand and gravel from Illinois points in the outer zone to the Chicago district found unduly prejudicial to interstate transportation of sand and gravel from Wisconsin points to the district.
3. Nonprejudicial basis of rates prescribed for the future.
4. Reparation denied.

Walter E. McCornack for complainants.

C. B. Cardy for Brownell Improvement Company and Kickapoo Sand & Gravel Company; *C. E. Heckler* for A. C. O'Laughlin Company and Federal Stone Company; *William J. Pringle* and *Edwin Terwilliger, jr.*, for Dolese & Shepard Company; and *John Andrew Ronan* and *H. D. Flansburg* for H. D. Conkey & Company, interveners.

John F. Finerty, *A. P. Humburg*, *K. F. Burgess*, *J. N. Davis*, *Robert H. Widdicombe*, *Royal T. McKenna*, *F. H. Towner*, *Guy A. Gladson*, *L. P. Day*, *C. D. Clark*, and *Frank A. Spink* for defendants.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AITCHISON, AND
LEWIS.McCHORD, *Commissioner*:

The issues here presented were made the subject of a proposed report by the examiner. Exceptions were filed by complainants and defendants, and the parties were heard in oral argument. Upon consideration of the record we have reached conclusions differing from those suggested by the examiner.

Producers of sand and gravel with pits at various points in Illinois and Wisconsin, allege that the rates charged therefrom for the

¹ This report also embraces No. 10895, American Sand & Gravel Company et al. v. Director General, as Agent, Chicago & North Western Railway Company et al.

transportation of those commodities to points within the Chicago switching district, located in Illinois and Indiana, hereinafter called the district, were and are unjust, unreasonable, unjustly discriminatory, and unduly prejudicial. We are asked to award reparation and to prescribe rates for the future.

It is fair to say that reparation is merely an incidental feature of the complaint and that the more vital issue is that of undue prejudice as between crushed-stone rates within the district and sand and gravel rates without the district; and that, since the passage of the transportation act, 1920, paragraphs (3) and (4), section 13, now incorporated in the interstate commerce act, the interstate transportation of sand and gravel was and is subjected to undue, unreasonable, or unjust discrimination to the advantage or preference of the intrastate transportation of sand, slag, and crushed stone. The Commission is asked to establish (a) minimum rates within the district on sand, slag, and crushed stone; (b) the same rates, single line, and the same rates, joint line, on sand, slag, and crushed stone within the district as on sand and gravel from points in the so-called inner zone to the district; and (c) to restore the differential, 0.25 cent per 100 pounds, the outer zone over the the inner zone, which was increased to 0.5 cent on interstate traffic since the effective date of the general increases of 1920, when the outer-zone intrastate points were separated from the outer-zone interstate points.

Unless otherwise specifically indicated, rates are stated to the district and in cents per 100 pounds, notwithstanding that they may be differently expressed in the tariffs. Also, unless otherwise stated, the points of origin and destination are in Illinois.

The Public Utilities Commission of Illinois was notified of the proceedings herein but did not participate. A similar complaint was filed with that commission by the complainants, in which the record herein was incorporated.

The pits of the complainants are at Carpentersville, Algonquin, Elgin, South Elgin, Gravel Pit, Ill., and Janesville, Wis., served by the Chicago & North Western, hereinafter called the North Western; Hammond's, Libertyville, Elgin, Rockford, Ill., Janesville and Riton, Wis., served by the Chicago, Milwaukee & St. Paul, hereinafter called the Milwaukee; Renwick, Ill., served by the Aurora, Elgin & Chicago Railroad; Coleman and Rockford, Ill., by the Illinois Central Railroad; Buckley Pit (Wilmot spur), Wis., by the Minneapolis, St. Paul & Sault Ste. Marie Railway; and Fontana, Wis., by the Chicago, Harvard & Geneva Lake Railway, which connects with the Chicago, Milwaukee & St. Paul at Walworth, Wis.

For rate-making purposes stations in Illinois and Wisconsin on the North Western and the Milwaukee at or near which sand and gravel are produced are grouped. The inner zone is in the Fox River Valley and embraces stations on the lines of those carriers in Illinois north and west of Chicago; the outer zone is in the Rock River Valley and includes farther distant points in Illinois, such as Rockford and Gravel Pit (near Beloit, Wis.) and Wisconsin points, such as Beloit, Janesville, and Waukesha. In *Advances in Rates on Sand and Gravel*, 24 I. C. C., 249, the average distances from the inner zone and from the outer zone were found to be 48 and 91 miles, respectively, and rates, respectively, of 1.5 and 1.75 cents per 100 pounds were required to be maintained, thus establishing a differential of 0.25 cent per 100 pounds.

Stone is produced in Illinois, within the district, at Harvey, Bellewood, McCook, and Gary, served by the Baltimore & Ohio Chicago Terminal, Indiana Harbor Belt, and Chicago & Illinois Western; without the district, at Joliet, served by the Elgin, Joliet & Eastern Railroad and Atchison, Topeka & Santa Fe Railway, and at Ives, Wis., served by the Chicago & North Western, and at Thornton, on the Chicago & Eastern Illinois and the Baltimore & Ohio Chicago Terminal railways.

Slag is obtained from South Chicago and Joliet on the Indiana Harbor Belt and Elgin, Joliet & Eastern. Slag is not as yet a strong competitor as a substitute for sand and gravel or crushed stone for use in road bases and heavy concrete work, but it is used to some extent.

Sand also moves from South Chicago via the Chicago, Rock Island & Pacific and Belt Railway Company of Chicago.

The primary purpose of the complainants is to secure increases in the rates on sand, slag, and crushed stone within the district to equal the increases since June 24, 1918, permitted in the rates on sand and gravel from the inner zone to the district, or to have the sand and gravel rates reduced to the level of the crushed stone, sand, and slag rates within the district, and, in addition, to have uniform rates from all similarly situated producing points to eliminate discrimination.

Various companies engaged in quarrying and in crushing stone at Bellewood, LaGrange, Gary, and McCook, Ill., and a sand and gravel company located at Kickapoo, Ind., intervened in opposition to any change in the rates to their disadvantage, the former particularly opposing any requirement that the rates on crushed stone within the district be increased. H. D. Conkey & Company,
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operating sand and gravel pits at Yorkville and Oregon, Ill., on the Chicago, Burlington & Quincy Railroad, hereinafter called the Burlington, intervened and asked relief similar to that sought by the complainants.

Rates for the transportation of sand, gravel, and crushed stone from points in Illinois, Indiana, and Wisconsin to the district have been considered in several cases.²

The rates from points in Illinois have been considered by the Public Utilities Commission of that state in three cases, in which the rates from the inner zone were not permitted to be increased. In one of these cases the North Western withdrew a proposed increase from 1.5 to 2 cents in rates on sand and gravel from the inner zone because the rate then maintained was necessary, although alleged to be non-compensatory, to permit of those commodities competing with crushed stone within the district.

A broad summary of what was found in the cases cited marginally is that sand and gravel, used in plaster, bricklaying, exterior stucco, and in making concrete, are of the lowest class of commodities in commerce; that the rate of 1.75 cents per 100 pounds in effect on June 24, 1918, from the outer zone to the district, was undoubtedly a low rate in itself and in comparison with other like rates for similar distances in the same and other territories; that these commodities load heavily; that they move in large volume and sometimes in trainloads from the inner zone; that expedited service is not required; that they are not susceptible to damage and move in the cheapest grade of open-top equipment; that crushed stone is twice the value of sand and gravel and does not load quite so heavily; that the district is the principal market for these commodities from points within 120 miles thereof. The North Western and the Milwaukee have proposed at different times to increase the rates from the outer zone to the district, as well as to increase the differential of that zone over the inner zone, but we in each instance have held that an increase of the differential had not been justified; mainly because of the group adjustment and commercial competition. These facts have support in the present record, except that the value of crushed stone is not shown to be uniformly twice the value of sand and gravel

² *Advances in Rates on Sand and Gravel*, 24 I. C. C., 249; *Waukesha Lime & Stone Co. v. C. M. & St. P. Ry. Co.*, 26 I. C. C., 515; *Gravel and Sand Switching Charges at Chicago*, 32 I. C. C., 291; *Sand and Gravel Rates from Wisconsin Points to Chicago, Ill., and Other Points*, 34 I. C. C., 467; *Crushed Stone from Wisconsin Points*, 37 I. C. C., 593; *Sand from Indiana Stations*, 39 I. C. C., 321; *Burlington Sand & Gravel Co. v. C., M. & St. P. Ry. Co.*, 40 I. C. C., 90; *Sand from Indiana Stations (No. 2)*, 43 I. C. C., 619; *Lake Shore Stone Co. v. C., M. & St. P. Ry. Co.*, 46 I. C. C., 320; *American Sand & Gravel Co. v. C. & N. W. Ry. Co.*, 48 I. C. C., 1; *Kickapoo Sand & Gravel Co. v. Director General*, 55 I. C. C., 657; and *Switching Charges within Chicago District*, 59 I. C. C., 125.

and does load as heavily. Certain qualifications of the competitive situation are also shown, to which reference will be made hereinafter.

The general rate situation on June 24, 1918, to which there were exceptions, follows: Local or single-line rates of 1 and 1.5 cents applied to the transportation of crushed stone, sand, and slag within the district; joint rates of 1.5 cents applied on crushed stone and sand within the district; on this date the rate from inner-zone points to the district on sand and gravel was 1.5 cents; from the outer zone, 1.75 cents. General order No. 28 of the Director General provided specific increases of 1 cent for stone (broken, crushed, and ground) and sand and gravel. No specific increase was provided for slag, it being subject to the general increase of 25 per cent provided in that order. Effective June 25, 1918, each of the rates on crushed stone, sand, and gravel was increased 1 cent, except that the rule for the disposition of fractions operated to increase the rate from the outer zone 1.25 cents, thus widening the differential recognized as proper by us for application from points in the outer zone over points in the inner zone from 0.25 to 0.5 cent. However, the 0.25 cent differential was restored via the North Western, effective September 4, 1918, and via the Milwaukee, effective September 7, 1918.

Effective early in November, 1918, pursuant to a general revision of interplant, intraterminal, and interterminal switching charges, the rates within the district on crushed stone and sand were reduced, as were the rates of all commodities switched therein, so as to embrace only an increase of 25 per cent above the rates in effect May 25, 1918. The rule for the disposition of fractions operated to increase the theretofore existing 1-cent rate within the district to 1.5 cents and the 1.5-cent rate to 2 cents, i. e., 50 and 33 $\frac{1}{3}$ per cent, respectively.³ The rates from the inner zone and the outer zone were not changed and remained 1 cent and 1.25 cents, respectively, above the rates in effect on June 24, 1918, i. e., increases of 66 $\frac{2}{3}$ and 71.5 per cent, respectively.

The following statement, showing rates as of August 25, 1920, in cents per ton of 2,000 pounds, applying for deliveries on industrial

³ The Lowrey tariff, naming terminal charges, rules, and regulations to apply on traffic from and to points within the Chicago switching district, provided for the application of the flat Chicago rate when the rate was 2.5 cents per 100 pounds or higher and the earnings \$15 per car or more, the shipper having the right when the rate was less than 2.5 cents per 100 pounds to pay that rate, subject to a minimum weight of 60,000 pounds, and thus avoid the payment of switching charges. The reciprocal switching arrangement which was the basis of that tariff is described in *Advances on Coal within Chicago Switching District*, 27 I. C. C., 71, 73.

64 I. C. C.

sidetracks located within the district from originating points stated, is submitted by complainants:

Commodity.	Originating carrier.	Point of origin (in Illinois except as noted).	Single-line rates.	Joint-line rates.
Within the district:			<i>Cents.</i>	<i>Cents.</i>
Crushed stone.....	Baltimore & Ohio Chicago Terminal.....	{Harvey..... McCook..... McCook..... LaGrange..... Bellewood..... Bellewood..... McCook..... Gary..... Joliet..... South Chicago.....	40	40
Do.....	Indiana Harbor Belt.....		30	40
Do.....	Chicago Great Western.....		30	.....
Do.....	Chicago & Illinois Western.....		40	40
Do.....	Chicago & Alton.....		40	1 60
Slag.....	Indiana Harbor Belt.....		40	40
Do.....	Pennsylvania Co.....	do.....	30	40
Do.....	Elgin, Joliet & Eastern.....	do.....	30	.....
Sand.....	Belt.....	do.....	40	40
Do.....	Chicago, Rock Island & Pacific.....	do.....	40	40
Without the district:				
Crushed stone and crushed slag.....	Atchison, Topeka & Santa Fe.....	Joliet.....	40	2 60
Slag.....	Elgin, Joliet & Eastern.....	do.....	30	3 50
Crushed stone.....	Chicago & Eastern Illinois.....	Thornton.....	40	4 50
Do.....	Chicago & North Western.....	Ives, Wis.....	50	5 50
Inner zone:				
Sand and gravel.....	do.....	Algonquin.....	50	5 50
Do.....	Wabash.....	Worth ²	40	50
Do.....	Chicago, Milwaukee & St. Paul.....	Libertyville.....	50	5 60
Do.....	Chicago & Alton.....	Millsdale ³	40	60
Do.....	Illinois Central.....	Coleman.....	50	4 50
Do.....	Aurora, Elgin & Chicago.....	Renwick ⁴	40	50
Do.....	Chicago, Burlington & Quincy.....	Yorkville.....	60	7 60
Gravel.....	Elgin, Joliet & Eastern.....	Plainfield ⁵	50	60
Outer zone:				
Sand and gravel.....	Chicago & North Western.....	{Gravel Pit..... Janesville, Wis..... Rockford..... Janesville, Wis..... Riton, Wis..... Oregon ⁶	55 55 70 55 55 70	55 5 55 70 5 55 55
Do.....	Illinois Central.....			
Do.....	Chicago, Milwaukee & St. Paul.....			
Do.....	Chicago, Burlington & Quincy.....			

¹ Rate applies for delivery to industries located on the Baltimore & Ohio, Baltimore & Ohio Chicago Terminal, Belt, Chicago, Burlington & Quincy, Chicago, Milwaukee & St. Paul, Grand Trunk Western, New York, Chicago & St. Louis, Pennsylvania Railroad, and Pittsburgh, Cincinnati, Chicago & St. Louis.

² Rate applies for delivery at points on the Indiana Harbor Belt located within the state of Indiana, in the district.

³ Rate applies for delivery to industries and team tracks located on the Chicago & North Western at Grand avenue, Wood street, and State street stations, Chicago, and also Cragin, Maywood, Melrose Park, Oak Park, Proviso, Ill., and Western avenue, Chicago. Also applies to numerous deliveries on the Milwaukee.

⁴ Rates apply to all industries and team tracks located on connecting lines that are shown in Lowrey's I. C. C. 37.

⁵ Line-haul rates from points on the North Western and Milwaukee were "plussed," first by switching charges of the initial lines of from \$2 to \$5; second, by charges for intermediate carrier's service, where used, usually \$6.57 per car; and third, by arbitraries, for deliveries on the lines of named carriers, ranging from \$3 to \$7.50 per car or from 15.5 to 25 cents per ton.

⁶ Not grouped.

⁷ On interstate movements the rate was 70 cents. This rate also subject to note 4.

This condition continued until August 26, 1920, when the general increases of 1920 became effective. An increase of 40 per cent was permitted by that decision in the territory of which the points here considered are a part; but the Public Utilities Commission of Illinois permitted the intrastate rates to be increased only 33½ per cent. As a consequence, the rates on crushed stone and sand became as follows: Within the district, single line, 2 cents; joint line, 2.5 cents; inner zone, 3.5 cents; outer zone, intrastate, 3.5 cents; and outer zone, interstate, 4 cents. Subsequently the Illinois commission per-

mitted an increase of 35 per cent in lieu of $33\frac{1}{2}$ per cent. This, however, does not change materially the above figures. These changes resulted not only in again widening the differential formerly existing between the inner and outer zones, through the operation of the rule for the disposition of fractions, but also disturbed the parity of rates existing between points in the outer zone.

The Kickapoo and Ginger Hill, Ind., rates of 2.75 cents were increased to 77 cents per ton; the 2.75-cent rate from Rockford via the Illinois Central was increased to 73.5 cents per ton; and the 3.5-cent rate from Oregon was increased to 93.5 cents per ton; that is, the two latter rates were increased $33\frac{1}{2}$ per cent. The differences in the amounts of the increases were brought about by the differences in the rates, the operation of the rule for the disposition of fractions, and the fact that the rates in some instances were stated in cents per 100 pounds and in other instances in cents per ton of 2,000 pounds, as well as by the difference in the percentage increases permitted within the state and that permitted from points without the state. The inner-zone rate was in fact increased on August 26, 1920, through the operation of the rule for the disposition of fractions, 40 per cent; the outer-zone intrastate rate 27.5 per cent, and the outer-zone interstate rate 46 per cent.

It is the contention of the complainants that the rates on crushed stone within the district and those applicable from the inner zone to the district were generally upon a substantial parity, although admittedly there were rate disparities, on June 24, 1918. Some of the single-line and the joint-line rates within the district were the same as the single-line rate from the inner zone to the district. This view, of course, does not take into consideration the differences in the car earnings brought about by the switching charges being absorbed or added in one case and not absorbed or added in the other. On October 12, 1908, the rate from the inner zone to Chicago was 2 cents, which was reduced on May 15, 1909, to 1.5 cents to meet a reduction of rates from inner-zone points on the Milwaukee. This rate was maintained without change to June 24, 1918. From June 23, 1906, to May 14, 1917, the rate on crushed stone from Thornton, via the Chicago & Eastern Illinois, was \$3.50 per car of 60,000 pounds, plus 10 cents per ton for the excess over 60,000 pounds. On the last-named date the rate was increased to 20 cents per ton. From December 16, 1907, to May 1, 1913, the local rate on crushed stone from McCook for deliveries in the district on the Indiana Harbor Belt was 20 cents a ton; increased on the last-named date to 30 cents per ton, which was maintained until June 25, 1918. On January 1, 1906, the rate from Thornton and McCook, via the Baltimore & Ohio Chicago Terminal, on crushed stone to the district, was 16 cents;

increased on May 10, 1910, to 25 cents; increased on August 1, 1911, to 30 cents; decreased on August 2, 1911, to 20 cents; increased on April 1, 1913, to 25 cents; and again increased on June 1, 1917, to 30 cents. It is apparent from the above that the rates on crushed stone within the district had no relation to the inner-zone rate on sand and gravel. This is equally true with respect to the rates from the outer zone, both interstate and intrastate because of the fixed differential above the inner-zone rate. It is also apparent that the rates on crushed stone within the district have been increased a greater percentage since 1909 than have the rates on sand and gravel from the zone.

The intrastate movement of crushed stone from points on the Indiana Harbor Belt is from 8 to 20 miles; the interstate movement to local points in Indiana is from 28 to 40 miles. The average weighted distances crushed stone is hauled within the district range from 5.6 miles to 17.1 miles for single-line hauls, although distances as great as 41 miles are possible, as compared to the average distances from inner-zone points of 47.3 miles via the North Western. The average distance from outer-zone points on that line is 86.6 miles.

Based on a loading of 100,000 pounds, which is high on the average, considering the size of equipment available for this traffic in the territory, the car earnings on June 24, 1918, on crushed stone from McCook, LaGrange, and Bellewood, on the Indiana Harbor Belt for industrial deliveries on that road, were \$10; on August 25, 1920, \$15; and on August 26, 1920, \$20. Concurrently the car earnings on sand and gravel from Algonquin for single-line hauls were, respectively, \$15, \$25, and \$35; from Hammond's \$20, \$25, and \$35; and from Beloit and Janesville, \$17.50, \$27.50, and \$40. At the same times the car earnings from McCook, LaGrange, and Bellewood on crushed stone originating on the Indiana Harbor Belt from the interchange track to industrial deliveries on the North Western, were, respectively, \$15, \$20, and \$25. Effective August 26, 1920, in some instances each factor of the through charge, i. e., line haul, intermediate charge, terminal arbitrary, and charge for the return of the empty car, was increased. It is impracticable to state generally all of the possible charges for different movements. It will suffice to say that the rates from points without the district which will effect joint-line delivery of sand and gravel vary from the line-haul rate alone or that rate "plussed" by charges to as high as 3 cents.

Complainants submitted no rate comparisons other than those shown in the foregoing tabulated statement to show that the rates charged were or are unreasonable. They contend that the crushed-stone rate from Ives and the rates within the district are sufficient to indicate unreasonableness. Defendants assert that the rates

were and are so low as not to need rate comparisons or cost studies to demonstrate their confiscatory trend. They submitted numerous comparisons from points in contiguous territory of rates charged on sand and gravel for actual movements, which indicate that the rates charged were and are low. Defendants also submitted three cost studies: (1) The cost to the Baltimore & Ohio Chicago Terminal of performing switching service in the district on all traffic for the year 1919, upon which the necessary rate to earn 6 per cent upon the investment for the year 1920 is predicated; (2) the cost in October, 1919, of handling sand and gravel from Algonquin via the North Western to its Wood street and North avenue stations in Chicago; (3) the estimated cost in May, 1919, based on the cost study in 1917, of transporting sand and gravel for the terminal service within the district and on all traffic from Hammond's, Ill., and Janesville on the Milwaukee to Chicago.

Sand and gravel are natural products requiring but little manufacture to make them marketable as compared with crushed stone. Various estimates were given as to the costs of producing the respective commodities. It appears, however, that sand and gravel are produced at least one-third cheaper than crushed stone. Stone is found in a solid mass, which must be drilled, blasted, and crushed. Blasting is sometimes necessary in producing sand and gravel, and about 12 per cent of large gravel is crushed to smaller sizes. The machinery for the crushing of stone is at least five times as expensive as that used for producing sand and gravel. The land of the crushed-stone producers, because of its proximity to Chicago, was and is more valuable than that from which sand and gravel are produced at complainants' pits. The stone obtained in the district is limestone, which, when finely crushed, is known as agricultural limestone and is used as a fertilizer, for which a higher price is obtained than for crushed stone used in concrete work. Some of the stone plants in the district have installed machinery especially adapted to produce that commodity. The record is clear that there is no competition between agricultural limestone, screenings, or dust used as a fertilizer, and sand or gravel, but that there is competition between crushed stone of the larger sizes and gravel used in concrete work. Inasmuch as a pit will produce approximately equal quantities of sand and gravel, it is apparent that but 50 per cent of its production competes with crushed stone. The competing commodities are sold in the Chicago market upon a cubic-yard basis, which affords crushed stone a natural commercial advantage over sand or gravel in that it requires 2,500 pounds of crushed stone per cubic yard to 3,000 pounds of sand or gravel.

Sand and gravel moving by rail from outside the district compete also with pit sand originating in the district, with lake and torpedo sand brought by boat to Chicago and moved from the wharves either by rail or by truck, with crushed stone produced at three quarries in Chicago from which delivery is made by truck, and crushed stone which comes into Chicago by boat.

Chicago is a great consuming market for all of these commodities, and there is competition between them. It has not been shown however, that the differences in the rates unduly prefer sand, slag, and crushed stone moving within the district or moving from Joliet and Thornton to the district or cause any unjust discrimination against interstate traffic on sand and gravel.

With respect to the interstate rates on sand and gravel from the Wisconsin points in the outer zone to the district, the greater percentage increase in those rates as compared with the percentage increase made in the rates from Illinois points in the outer zone has disrupted the outer-zone group. The rate on sand and gravel from complainants' pits at Janesville, Wis., for example, is now 4 cents, whereas the rate from Gravel Pit, Ill., is 3.50 cents. On August 25, 1920, the rates from these points were the same. The transportation is performed under substantially similar circumstances and conditions. The maintenance of these lower rates from Illinois points in the outer zone results in undue prejudice to interstate traffic from the Wisconsin points in the outer zone. An increase in the intrastate rates from the outer zone to the level of the interstate rates from that zone will, however, widen the long established 0.25-cent differential over the inner-zone rate, a change which is not justified by any material changes in the transportation conditions. We are of the opinion that the interstate rate on sand and gravel from the outer zone should be 3.75 cents per 100 pounds and that the intrastate rates on sand and gravel from the outer zone should be increased to 3.75 cents to remove the undue prejudice to the interstate traffic and to restore the differential.

REPARATION.

Complainants seek reparation on shipments which moved (1) during the period from June 25, 1918, to September 4 and 7, 1918, when the differential of 0.25 cent, outer zone over the inner zone, was increased to 0.5 cent; (2) within the period of limitations for switching charges on sand and gravel in excess of \$4 per car of 60,000 pounds plus 10 cents per ton of 2,000 pounds for the excess over 60,000 pounds not absorbed in the line-haul rate by the North Western, or by the Milwaukee; (3) on shipments from the inner and outer zones from November 1, 1918, to August 25, 1920, in the difference

between the increase of 0.5 cent applied to rates on crushed stone within the district and 1 cent applied on rates on sand and gravel. The only testimony submitted was with respect to shipments from Carpentersville, Coleman, Algonquin, Hammond's, and Gravel Pit, Ill., and Janesville and Fontana, Wis.

1. Nothing in any of the cases dealing with the differential here considered indicates that the rate from the outer zone was normal; in fact, we have repeatedly said it was low. For hauling a car of sand or gravel weighing 93,500 pounds defendants receive for the average additional haul of over 40 miles beyond the inner zone \$2.34. The rate of 1.75 cents was maintained without change from May 15, 1909, to June 24, 1918, and hence embraced no increases following *The Five Per Cent Case*, 31 I. C. C., 351; 32 I. C. C., 325; or *The Fifteen Per Cent Case*, 45 I. C. C., 303.

2. In *State Public Utilities Commission v. Chicago & N. W. Ry. Co.*, 279 Ill., 110, the supreme court of Illinois affirmed an order of the state commission requiring the establishment of a joint rate of 1.5 cents per 100 pounds, plus \$4 per car of 60,000 pounds or less and 10 cents per ton for the excess over 60,000 pounds, on sand and gravel from Carpentersville, Elgin, Cary, and Algonquin on the North Western, and from Libertyville and Spaulding on the Milwaukee, all inner-zone points, to the district, for connecting-line deliveries. These rates became effective in July, 1917. On September 15, 1917, the North Western and the Milwaukee proposed to increase the \$4 charge to 1 cent per 100 pounds, but the operation of that rate was suspended by the Public Utilities Commission of Illinois until January 9, 1919, when it was withdrawn and the \$4 charge became effective on interstate traffic. However, on May 30, 1919, the \$4 charge was limited to apply to intrastate traffic only. Effective January 27, 1920, the North Western and the Milwaukee restored the charge of 1 cent, the charge for intermediate switching being absorbed by the North Western and not by the Milwaukee. The charges of the Milwaukee at that time were, on interstate traffic, \$3.50 per car and \$1.75 for the return of the empty car; on intrastate traffic, \$3 per car and \$1.50 for the return of the empty car. On February 29, 1920, the charge was increased by the North Western and the Milwaukee to 1.25 cents per 100 pounds. The intermediate charge was at that time increased by the Milwaukee to \$4.38 per car and \$2.19 for the return of the empty car. The intermediate charge was absorbed by the North Western, but not by the Milwaukee. The North Western states that its absorption of the intermediate charge was an error. See *Gravel and Sand Switching Charges at Chicago, supra*. On August 26, 1920, the terminal, intermediate, and empty-return charges were, respectively, increased to 1.5 cents per 100 pounds, \$6 and \$3 per car.

The average loading per car of sand and gravel for one year on the North Western was 95,200 pounds. On August 25, 1918, the average revenue received by that road for the transportation of those commodities from the inner zone and the outer zone to private sidetrack deliveries in the district were, respectively, \$23.71 and \$26.18 a car. If the terminal charge, 1 cent per 100 pounds, or \$9.52, the intermediate charge of \$4.38, the charge for the return of the empty car of \$2.19 and the per diem reclaim, five days, at 90 cents a day, or \$4.50, were deducted from that revenue, a balance of \$3.12 was left for the average haul from the inner zone of 47 miles, and for the average haul from the outer zone of 87 miles, \$5.59. If the delivery was to a team track, the carrier would have been out of pocket \$2.64. Team-track deliveries are not involved herein. Defendants contend that the rates to deliveries on connecting lines should be the full sum of the line-haul rate plus the charges of all the other carriers engaged in the service; the charges on any other basis should be canceled; that absorption of terminal charges would necessitate a vast amount of cross hauling and be an economic waste, involving greater delay to much-needed open-top equipment than now prevails in the congested district of Chicago.

3. In *Kaw River Sand & Material Co. v. A., T. & S. F. Ry. Co.*, 55 I. C. C., 683, which complainants state is exactly in point, charges for the transportation of sand, in carloads, from Turner, Kans., to destinations within the switching limits of Kansas City, Mo.-Kans., were found unreasonable to the extent of 2 cents per 100 pounds and relatively unreasonable to the extent they exceeded the rates contemporaneously in effect from Sirridge, Kans. In applying general order No. 28, movements from Turner were treated as a road haul and the rates of the initial lines were increased 1 cent; the transportation from Sirridge was treated as a switching movement; the charges of which were increased 25 per cent. Reparation was awarded. However, the distances from these points were about the same, 9 miles, and the rates had been about the same before the increases. On June 24, 1918, the charge from Turner to industries at Sugar Creek, Mo., was 1.75 cents for a haul of 18 miles, the same as was charged from the outer zone to the district. The mere fact that after November 1, 1918, the rates on crushed stone within the district were increased to embrace but 0.5 cent and the rates from the inner zone were increased to embrace 1 cent, does not indicate unreasonableness of the inner-zone rate. The contention of the complainants is that the rates on crushed stone, slag, and sand within the district were not increased enough, comparatively.

CONCLUSIONS.

We are of the opinion and find (1) that the rates on sand, slag, and crushed stone from Joliet and Thornton, Ill., to the Chicago switching district and from and to points within the district did not and do not cause any undue, unreasonable, or unjust discrimination against, or result in undue prejudice to sand and gravel moving in interstate commerce from the inner and outer zones on the North Western and the Milwaukee, and from Renwick, Coleman, Rockford, Oregon, and Yorkville, Ill., Fontana and Buckley Pit (Wilmot spur), Wis., to the district; (2) that the intrastate rates on sand and gravel from points in Illinois in the outer zone on the lines of the North Western and the Milwaukee to the Chicago district are unduly prejudicial to interstate commerce in sand and gravel from points in Wisconsin in the outer zone on the lines of the said carriers and from Fontana, Wis., to the Chicago district, to the extent that they are lower than the rates contemporaneously in effect on sand and gravel from the latter points to the district; (3) that for the future the rates on sand and gravel from the outer zone on the North Western and on the Milwaukee and from Fontana, Wis., to the Chicago district should not exceed 3.75 cents per 100 pounds and that the line-haul carriers should absorb the charge of the intermediate carrier but may "plus" their charges by those of the delivering carrier; (4) that the rates from points in the inner zone on the North Western and on the Milwaukee to the Chicago district, should be maintained on a differential of 0.25 cent under the rates contemporaneously in effect on sand and gravel from the outer-zone points on these lines and from Fontana, Wis., to the Chicago district.

We further find that the rates complained of were not unreasonable and that complainants have not been damaged by the undue prejudice. Reparation is denied.

An appropriate order will be entered.

No. 11638.

LITTLE CAHABA COAL COMPANY

v.

DIRECTOR GENERAL, AS AGENT, BIRMINGHAM
SOUTHERN RAILROAD COMPANY, ET AL.

Submitted April 15, 1921. Decided September 23, 1921.

Rate on coal, in carloads, from Piper to Fairfield, Ala., during federal control, found not unreasonable. Complaint dismissed.

James J. Jackson for complainant.

Edward D. Mohr for defendants.

John F. Finerty, Alexander M. Bull, and John C. Brooke for Director General, as Agent.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AITCHISON, AND
LEWIS.

BY DIVISION 1:

Exceptions were filed by the Director General, as Agent, to the report proposed by the examiner and the case was orally argued.

Complainant, a corporation engaged in mining coal at Piper, Ala., alleges that the rate charged on three carloads of coal from Piper to Fairfield, Ala., in September, 1919, was unreasonable to the extent that it exceeded 80 cents per net ton. The prayer is for reparation only.

The shipments moved as routed over the Louisville & Nashville to Ensley, Ala., and the Southern beyond, 52 miles. Charges were collected at the applicable rate of \$1.20 per ton, made up of 70 cents to Ensley and 50 cents beyond. There was contemporaneously in effect a rate of 80 cents per ton via the Southern and the Birmingham Southern, 45 miles. The shipments were routed as described because of a car shortage on the Southern. All of the carriers named except the Birmingham Southern were under the control and operation of the Director General of Railroads.

The record does not show the weight of the shipments; but assuming an average of 40 tons per car, the rate charged was equivalent to car earnings of \$48, car-mile earnings of 92 cents, and ton-mile earnings of 23 mills. The 80-cent rate subsequently established yields \$32 per car, 61.5 cents per car-mile, and 15.4 mills per ton-mile.

The rate complained of does not compare unfavorably with other rates concurrently in effect on coal for two-line hauls for similar distances in the same territory.

We find that the rate complained of was not unreasonable. An order dismissing the complaint will be entered.



INVESTIGATION AND SUSPENSION DOCKET No. 1354.

MINIMUM WEIGHT ON EGG-BOX STUFF AND EGG-CASE FILLERS FROM MISSOURI RIVER POINTS TO KANSAS.

Submitted July 29, 1921. Decided September 27, 1921.

Proposed increased carload minimum on egg-box stuff and egg-case fillers from Missouri River points to interstate destinations in Kansas found justified. Order of suspension vacated and proceeding discontinued.

R. G. Merrick and J. C. LaCoste for respondents.

Tillman R. Atchison for Union Pacific Railroad Company.

F. T. Durant and T. J. Slattery for protestant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

By schedules filed to become effective July 1, 1921, the western trunk lines, respondents herein, proposed to increase from 24,000 to 30,000 pounds the minimum weight on interstate shipments of wooden egg cases or carriers, knocked down flat, egg-case material, and egg-case fillers, in straight or mixed carloads, from Missouri River points to destinations in Kansas. Upon protest of the Chamber of Commerce of Kansas City, Mo., on behalf of the N. A. Kennedy Supply Company, hereinafter called protestant, the schedules were suspended until November 28, 1921.

In the western classification these articles in carloads are rated fifth class, subject to a minimum of 30,000 pounds. Under an exception thereto respondents provide fifth-class rates, with a minimum of 24,000 pounds, on both intrastate and interstate shipments to Kansas destinations from Missouri River cities. The proposed schedules, if allowed to become effective, will result in continuing the applica-

tion of the existing 24,000-pound minimum upon Kansas intrastate traffic, but will render applicable the classification description and minimum to interstate traffic from the Missouri River.

The proposed change is the result of an attempt on the part of the carriers to establish throughout this territory a uniform description and an increased minimum weight on these articles, which they desire to apply both state and interstate. Respondents state that 30,000 pounds is a satisfactory minimum to the majority of shippers. They also point out that the shippers will be benefited by the more liberal mixing provisions provided for in the classification, and assert that the 30,000-pound minimum can be loaded into a standard 36-foot car.

Protestant does not attack the reasonableness of a 30,000-pound minimum. Its sole ground for objection is the possible undue prejudice that might follow from the maintenance of a lower minimum on intrastate traffic from Missouri River cities, such as Atchison and Leavenworth, Kans., which, it claims, would enable competitors there located to secure more readily the business of small Kansas consumers. If the minimum weights, both state and interstate, were made 30,000 pounds, the protestant would be satisfied.

Respondents admit that there is no justification for applying a higher minimum on interstate than contemporaneously applies on intrastate traffic from the Missouri River, and state that it was their original intention to increase the minimum on intrastate traffic to 30,000 pounds, but that this was not done because of the pendency before us of a proceeding involving Kansas state rates which has since been concluded. *Kansas Rates, Fares, and Charges*, 62 I. C. C., 440.

On this record we find that the proposed increase in the minimum weight has been justified. An order will be entered vacating our order of suspension and discontinuing this proceeding.

64 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 1363.
CLASSIFICATION RATING ON FLAVORING EXTRACTS.

Submitted August 29, 1921. Decided September 27, 1921.

Proposed first-class rating on flavoring extracts in official express classification found not justified. Suspended schedules ordered canceled.

J. H. Mooers for American Railway Express Company, respondent.
L. B. Sheffield for protestants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

By schedules filed to become effective July 20, 1921, respondents proposed to establish a specific first-class rating on flavoring extracts moving by express. Upon protest of the C. F. Sauer Company, Richmond, Va., and the Flavoring Extract Manufacturers' Association of the United States, operation of the schedules was suspended until November 17, 1921.

Prior to February 1, 1914, flavoring extracts moved by express at first-class rates under the designation of "merchandise." Since that date, following *In Re Express Rates, Practices, Accounts, and Revenues*, 24 I. C. C., 380, 28 I. C. C., 131, they have moved at the second-class rating under "articles of food not otherwise specified." It is now contended by the American Railway Express Company, herein-after called respondent, that flavoring extracts are not articles of food or drink for which the second-class rating was primarily established, but are food adjuncts, serving the same general purpose as condiments, without nutritive qualities, and not properly entitled to this rating. Foods entitled to the second-class rating are stated to be those articles consumable in practically the condition in which shipped, or made so by cooking, such as poultry, dairy products, fish, fruits, vegetables, and the like. Second-class rates are uniformly 75 per cent of the first-class rates.

The ingredients of flavoring extracts are usually essential oils or pure fruit extracts and alcohol, the purpose of the latter being that of a preservative. The use of pure fruit extracts tends to diminish the alcoholic content, and these are replacing the essential oils. There are approximately 91 different flavoring extracts manufactured.

Between 1.5 and 2.5 per cent of the flavoring extracts marketed move by express. The remainder move by freight, and are rated in consolidated freight classification first class in less than carloads and third class in carloads, in all territories. The movement by express comprises emergency orders or small quantities purchased by retailers and others. They are usually shipped in 1.5-ounce to 4-ounce glass bottles, corked and inclosed in paper cartons, 12 to the package in paper containers, the packages being packed in wood, fiber, or corrugated-paper cases. The gross weight of the cases varies from 35 to 220 pounds each. The value ranges from \$20 to \$80 per 100 pounds. Loss and damage claims are small, not exceeding a fraction of 1 per cent. When the alcoholic content exceeds about 50 per cent and the flashpoint is 80° Fahrenheit or lower, they must be packed for shipment according to rules and regulations approved by us under the transportation of explosives act, as amended, labeled as inflammables, and handled with special care. The volume of alcohol in each depends upon the formula employed by the manufacturer, but in the majority of instances it ranges from 20 to 30 per cent, except that vanilla and lemon, which constitute 75 per cent of the output, average 25 to 45 per cent and 80 per cent, respectively. The proportion of the total output of the country containing less than 50 per cent of alcohol is said to equal 90 per cent. The remaining 10 per cent, that moving as inflammables, comprises, generally speaking, 8 to 10 different flavors.

Respondent likens flavoring extracts to essential oils, which take first-class rates. But essential oils are in the nature of raw materials and do not directly enter prepared foods in other than diluted form. Moreover, they command a much higher unit price than flavoring extracts. The same is true of alcohol. Yeast and vanilla beans are specifically rated second class. Articles also rated second class as articles of food are fountain sirups, tabasco sauce, pepper sauce, and worcestershire sauce, catsup, mustard, olive oil, horseradish, cinnamon, cloves, salt, pepper, baking powder, and corn sirup. It is true that inflammables usually take first class, but only a small proportion of shipments of flavoring extracts are classed as inflammables.

Section 6 of the food and drugs act of 1906, as amended, defines "food" as used therein to "include all articles used for food, drink, confectionery, or condiment by man or other animals, whether simple, mixed, or compound."

We find that the schedules under suspension have not been justified, and an order will be entered requiring their cancellation.

No. 11623.

IN THE MATTER OF RATES, FARES, AND CHARGES OF
THE NEW YORK CENTRAL RAILROAD COMPANY AND
OTHER RAILROAD COMPANIES IN THE STATE OF
NEW YORK.

Submitted June 2, 1921. Decided October 4, 1921.

Upon further hearing, order entered in pursuance of our original report herein, 59 I. C. C., 290, modified by striking out the name of the Fonda, Johnstown & Gloversville Railroad Company.

Baker, Burton & Baker and *F. A. Moore* for Fonda, Johnstown & Gloversville Railroad Company; and *Visscher, Whalen, Loucks & Murphy* for New York Central Railroad Company.

Charles D. Newton and *Edward C. Griffin* for state of New York; *Ledyard P. Hale* for Public Service Commission of the state of New York, second district; *Ambrose P. Fitz-James* for city of Amsterdam, N. Y.; *C. J. Hixson* for Rectors Parent-Teacher Association; and *Charles H. Collins* for himself.

REPORT OF THE COMMISSION ON FURTHER HEARING.

LEWIS, *Commissioner*:

In our original report herein, 59 I. C. C., 290, we found that the failure of the carriers within the state of New York to increase their standard intrastate fares and charges for the transportation of passengers in New York to correspond with the increases made by them in their interstate fares and charges resulted in undue prejudice to persons traveling in interstate commerce within the state of New York and between points in that and other states; in undue preference and advantage to persons traveling intrastate in New York, and in unjust discrimination against interstate commerce. By our order we required the carriers to remove the undue prejudice, preference and advantage, and unjust discrimination by increasing their fares and charges for intrastate application in New York.

On February 19, 1921, for good cause shown, the proceeding was reopened for further hearing on the single question of whether or not our findings and order should be modified in so far as they applied to the Fonda, Johnstown & Gloversville Railroad Company, on the ground that the intrastate rates, fares, and charges of said company are not so related to interstate rates, fares, and charges as to

contravene the provisions of the interstate commerce act. The company will hereinafter be referred to as the respondent.

Respondent operates an electric and steam railroad wholly within the state of New York. It was organized in December, 1902, through the consolidation of a company of the same name owning and operating a steam railroad, 25.5 miles in length, from Fonda northeast through Johnstown and Gloversville to Northville; an electric line operating within the city of Amsterdam and which was being extended easterly to Schenectady and westerly to Tribes Hill; and an electric line from Gloversville through Johnstown to Fonda and being extended to Tribes Hill.

Following the consolidation the electric lines were extended and now, in addition to the steam road referred to, there is an electric line paralleling the steam road from Gloversville south to Fonda, 8.7 miles, and an electric line from Gloversville, through Johnstown, Tribes Hill, and Amsterdam, southeast to Schenectady, 32.5 miles. In addition there are two short branches, one electric and one steam. Between Tribes Hill and Schenectady respondent's electric line closely parallels the line of the New York Central Railroad.

Respondent operates steam freight trains throughout the year, and steam passenger trains during two months in the summer, between Fonda and Northville; at other seasons it operates steam passenger trains north of Gloversville only. The electric division between Gloversville and Schenectady is devoted almost exclusively to passenger traffic. Interline tickets are sold only at Johnstown, Gloversville, and points north thereof. Baggage is handled only between Northville and Fonda, but by an arrangement with the New York Central baggage is accepted by that line at Fonda although passengers may travel over respondent's line by way of Schenectady. Respondent operates no parlor or sleeping cars and handles a negligible amount of milk and cream. During 1919 but 146,762 passengers were handled over the steam division, as compared with 6,380,973 over the electric division. Respondent's total passenger revenue for the year 1920 was \$886,667.59. The interstate passenger business yielded only \$1,107.15 of this, or less than 0.25 per cent.

Respondent was not among the carriers upon whose petition this proceeding was originally instituted, and upon further hearing made no showing of necessity for increasing its passenger fares to the basis of 3.6 cents per mile. Our original order in this case applied to the carriers named only "as they respectively participate in the transportation." Respondent does not "participate in the transportation" as that term is used in the order. The order will accordingly be modified by striking respondent's corporate title therefrom.

COMMISSIONER DANIELS dissents.

No. 11419.
RESERVOIR HEIGHTS STOCK RANCH
v.
DIRECTOR GENERAL, AS AGENT.

Submitted April 21, 1921. Decided September 28, 1921.

Rate on garbage, in carloads, from Minneapolis, Minn., to Spur No. 8 on the line of the Minneapolis, St. Paul & Sault Ste. Marie in Minnesota, during federal control, found unreasonable. Reparation awarded.

Charles E. Elmquist and Clapp & Macartney for complainant.
H. B. Ramsey for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation engaged in buying, fattening, and selling hogs near Crystal, Minn., alleges that the charges collected by defendant on 529 carloads of garbage shipped between August 1, 1918, and February 20, 1919, inclusive, from Minneapolis, Minn., to Spur No. 8 on the line of the Minneapolis, St. Paul & Sault Ste. Marie, hereinafter called the Soo line, in Minnesota were unreasonable. We are asked to award reparation. Rates will be stated in cents per 100 pounds.

During the spring and summer of 1918 complainant constructed its plant at Spur No. 8, about 1 mile beyond Crystal, which, according to the Soo line's mileage tables, is 12 miles from Minneapolis. Complainant contracted with the city of Minneapolis for the purchase of its garbage for a period of three years at \$1.26 per ton delivered loaded on cars at Minneapolis. Shipments began August 1, 1918. The garbage was shipped in steel tanks belonging to the city. Each tank contained an average of about 1 ton. The tanks were loaded, 12 to a car, on flat cars used only for that purpose. The loaded cars were moved to the railroad yards at Shoreham, across the river from Minneapolis, and there made up in trains. The cars were generally moved in a local-freight train, except while that was discontinued.

Prior to June 25, 1918, garbage was rated class E, minimum 40,000 pounds, in western classification. For distances of 5, 10, and 64 I. C. C.

15 miles, the rates were 2.4, 2.6, and 2.8 cents, respectively. On that date the class-E rates for distances up to 45 miles were increased to 5 cents pursuant to general order No. 28 of the Director General, which provided that the minimum class-E rate should be 5 cents. No change was made in the minimum weight. The minimum carload charge of \$20 was collected on all the shipments except a few which exceeded 40,000 pounds and on which the charges were correspondingly higher. On February 21, 1919, a commodity rate of 2.75 cents was established subject to the minimum charge of \$15 per car under general order No. 28. On March 12, 1919, the \$15 minimum-charge provision was canceled. Complainant seeks reparation to the basis of the 2.75-cent rate.

Complainant contends that the 5-cent rate was excessive compared with contemporaneous rates on analogous commodities such as sawdust, beet pulp, lime, refuse, clay, cinders, manure, and sugar beets moving under commodity rates of 2.5 cents or less for distances up to 10 miles, and 3 cents for distances up to 15 miles. It insists that garbage, being a waste product which the city of Minneapolis had previously incinerated, should move at low rates.

There is some dispute as to the distance between these points, but the cars were hauled 13 miles. Defendant points out that the rate applicable prior to June 25, 1918, increased by 25 per cent, would be 3.5 cents. The establishment of the commodity rate and the cancellation of the \$15 minimum charge per car were in response to the recommendation of the local freight traffic committee. Defendant urges that the voluntary reduction of a rate is not sufficient evidence in itself to establish unreasonableness, and that the reduced rate ought not to be used as a standard of reasonableness in this case.

There is no evidence of movement before complainant started shipping. The business has proved unsuccessful financially and is to be discontinued. Garbage, a waste product, is entitled to low rates.

We find that the rate assailed was unreasonable to the extent that it exceeded 3.5 cents per 100 pounds, minimum 40,000 pounds; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged in the amount of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with rule V of the Rules of Practice.

No. 11744.

J. J. STEHLEY

v.

DIRECTOR GENERAL, AS AGENT, NORTHERN PACIFIC
RAILWAY COMPANY, ET AL.

Submitted April 21, 1921. Decided September 28, 1921.

Rate on carload of lignite coal from Stanton, N. Dak., to Hecla, S. Dak., found unreasonable. Reparation awarded.

H. L. Laird for complainant.

B. W. Scandrett for defendants.

B. W. Scandrett, John F. Finerty, and D. W. Lyons for Director General, as Agent.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by the Director General, as Agent, to the report proposed by the examiner.

Complainant, a coal dealer at Hecla, S. Dak., alleges that the rate charged on one carload of lignite coal shipped on January 26, 1918, from Stanton, N. Dak., to Hecla was unreasonable. The prayer is for reparation only. Unless otherwise specified rates will be stated in amounts per net ton.

The shipment, weighing 44,700 pounds, moved over the Northern Pacific to Oakes, N. Dak., thence Chicago & North Western to destination, 249 miles. The rate charged was the applicable combination rate of 21.5 cents per 100 pounds, composed of a commodity rate of 17 cents to Oakes and the class-D rate of 4.5 cents beyond. This rate yielded ton-mile earnings of 17.27 mills. On August 10, 1918, joint rates were established from other lignite-coal producing points on the Northern Pacific in North Dakota, via Oakes, to points on the Chicago & North Western in South Dakota, including Hecla, but through oversight Stanton was not included among the points of origin. The tariff named a rate of \$2.65 to Hecla from Beulah, N. Dak., 20 miles beyond Stanton, and defendants' witness stated that the rate over the line of movement computed on a distance basis would have been \$2.55, which the defendant Northern Pacific considered a reasonable rate to apply on complainant's shipment. Rep-

aration to the basis of the latter rate is satisfactory to complainant. The ton-mile earnings thereunder would be 10.24 mills.

On November 20, 1918, a joint rate of \$1.50 was established over the route of movement. On August 26, 1920, it was increased to \$2.025, the present rate. Defendants' witness urges that both the \$1.50 rate and the \$2.025 rate were emergency rates, are abnormally low, and should not be used as a basis for an award of reparation. He states that the question of their revision is now under consideration by the interested carriers, the emergency which they were designed to meet having passed.

We find that the rate charged was unreasonable to the extent that it exceeded \$2.55 per net ton; that complainant made the shipment as described and paid and bore the charges thereon at the rate herein found unreasonable; that he has been damaged in the amount of the difference between the charges collected and those which would have accrued at the rate herein found reasonable and is entitled to reparation, with interest. The record does not disclose the amount of the charges ultimately paid. Complainant should comply with rule V of the Rules of Practice.

64 I. C. C.

No. 11535.

ATLANTIC REFINING COMPANY

v.

DIRECTOR GENERAL, AS AGENT, NEW YORK CENTRAL
RAILROAD COMPANY, ET AL.

Submitted March 21, 1921. Decided September 28, 1921.

Rates charged on petroleum and asphaltum, in carloads, from Franklin, Pa., to intrastate destinations, during federal control, found unreasonable. Reparation awarded.

C. D. Chamberlin, E. H. Porter, and Oscar H. Price for complainant.

Guernsey Orcutt for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

This case was submitted upon an agreed statement of facts. Exceptions were filed by complainant to the report proposed by the examiner, and the case was orally argued. We have reached conclusions differing from those proposed by the examiner.

Complainant, a corporation dealing in petroleum and its products, with a refinery at Franklin, Pa., alleges that the rates charged for the transportation of petroleum and asphaltum, in carloads, during the period from May 1, 1918, to December 24, 1919, from Franklin to intrastate destinations were illegal and unreasonable. We are asked to award reparation and to prescribe reasonable rates, but our jurisdiction in this case is confined to the period of federal control.

Franklin is 9 miles southwest of Oil City, Pa., and is on the Erie, New York Central, and Pennsylvania. The latter has no track connections with the other carriers at Franklin but has such connections at Oil City. The shipments originated on the Erie and New York Central at Franklin and moved as routed by complainant via Oil City to destinations on the Pennsylvania. In most instances joint rates published in tariffs of the initial lines were charged. It was not defendants' intention to make these rates applicable, and no divisions thereof were established, over the route of movement. One of the

tariffs provided that cars must be carded via the New York Central, Erie, Pa., and the Pennsylvania, which is inconsistent with routing through Oil City. It is further admitted that the rates charged to three of the destinations can not be found in any tariff applicable from Franklin.

At the time of movement Pennsylvania tariffs provided for the absorption of the charges from Franklin on shipments originating at designated industries, including complainant's plant, and destined to points on the Pennsylvania beyond Oil City. In the description of traffic upon which absorptions would be made the following limitation appeared: "where there are no published through rates in effect." Defendants state that through error this limitation was made applicable to all traffic, whereas it was intended to apply to destinations on the lines of certain carriers other than the Pennsylvania over a specified route. The tariff was corrected on December 24, 1919, to provide for the absorption of the charges to Oil City, whether there were through rates in effect or not.

Prior to May 1, 1918, it was the general practice of the Erie and the New York Central to waybill the shipments to Oil City at local or proportional rates, and of the Pennsylvania to rebill them to final destination at the rates applicable from Oil City, absorbing the charges to Oil City. The latter were based upon line-haul rates and not upon switching charges. On May 1, 1918, in compliance with general order No. 11 of the Director General of Railroads, the shipments were waybilled through from Franklin to their respective destinations. Thereupon the absorption described was discontinued and charges were generally based upon the tariffs of the initial carriers, under which higher charges resulted. In *Chestnut Ridge Railway Case*, 37 I. C. C., 558, 562, where the Chestnut Ridge published proportional rates to its connections with another carrier which were absorbed by the latter, we said respecting interstate traffic:

While it is proper for the line-haul carrier to absorb the terminal or switching charges of a connecting line it may not absorb its local transportation charges in the manner indicated above. *Coal Rates on the Stony Fork Branch*, 26 I. C. C., 168. The same result may be accomplished by publishing joint rates from all points on the Chestnut Ridge no higher than the junction point rates,

* * *

Upon the argument it was stated that joint rates would soon be established from Franklin upon the Oil City basis. In view of the conclusion we have reached concerning the reasonableness of the rates charged it will be unnecessary to pass upon their legality.

Briefly stated, it was the practice for more than 25 years prior to May 1, 1918, to apply the Oil City rates on shipments from Frank-

lin; it was not the carriers' intention to make applicable on that date a different basis of rates; and subsequently steps were taken to restore the rate basis previously in effect.

We find that the rates charged were unreasonable to the extent that they exceeded the rates contemporaneously applicable from Oil City to the respective destinations; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged in the amount of the difference between the charges paid and those which we find would have been reasonable; and that it is entitled to reparation in that amount, with interest. Complainant should comply with rule V of the Rules of Practice.

64 I. C. C.

No. 11348.

EMPIRE COTTON OIL COMPANY

v.

DIRECTOR GENERAL, AS AGENT, ATLANTIC COAST
LINE RAILROAD COMPANY, ET AL.

PORTIONS OF FOURTH SECTION APPLICATION NO. 703.

Submitted December 3, 1920. Decided September 28, 1921.

1. Rates on cotton seed, in carloads, from certain points in Florida to Cordele, Ga., found unreasonable. Reparation awarded.
2. Fourth section relief denied.

Charles E. Cotterill for complainant.*Frank W. Gwathmey* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation engaged in crushing cotton seed at Atlanta, Ga., alleges by complaint filed March 27, 1920, that the rates charged on carload shipments of cotton seed subsequent to June 24, 1918, from certain points in Florida to Cordele, Ga., were and are unjust and unreasonable. We are asked to award reparation and to establish reasonable rates for the future. Rates are stated in cents per net ton and do not include the general increase of 1920.

The points of origin are Alton, Mayo, Day, and Live Oak, on the Live Oak, Perry & Gulf, Live Oak being the junction of that railroad with the Atlantic Coast Line, and Fort White, Branford, Altoona, and Webster on the Atlantic Coast Line. The shipments covered by the reparation statement moved between January 17 and April 10, 1919.

Charges were collected based upon the Jacksonville, Fla., combinations, which under the tariffs were made the bases for the through rates, composed of the class-M rates to Jacksonville and the class-D rate beyond. Some of the shipments moved via Jasper, Fla., others via Lake City, Fla., and the Georgia Southern & Florida to destination; and some via Perry, Fla., the South Georgia to Adel, Ga., and the Georgia Southern & Florida to destination. None moved through Jacksonville.

When the shipments moved there were combination rates over the routes of movement and other routes lower than the combinations on Jacksonville which were charged. It is claimed that in some instances the distances via Jacksonville are nearly twice as great as by the direct route. Complainant contends that the rates charged are in violation of the aggregate-of-intermediate-rates provision of the fourth section of the interstate commerce act and unreasonable to the extent that they exceeded the lowest combination over any route. The rates charged were higher than the aggregates of intermediates over the route of movement, were not protected by appropriate applications, and were unlawful.

Complainant compared the rates assailed with the lower rates to Bainbridge, Ga., for a longer haul; with the rates to Savannah, Ga., and Charleston, S. C.; and with the lower rates for longer hauls to Jacksonville from stations in South Carolina. Complainant contends that the full class-D rate is seldom applied where there is a movement of cotton seed, and refers to lower rates applicable under distance scales of other roads. Instances were also furnished of various commodity rates lower than the rates paid, although for greater distances.

Prior to the hearing defendants proposed to establish for the factor between Jacksonville and various points in Georgia rates made on a proposed Georgia distance scale extended to Jacksonville. Under such an adjustment the rate from Jacksonville to Cordele would have been \$2.90 as compared with the class-D rate of \$4 applied on these shipments. The suggested adjustment was acceptable to complainant, but the distance scale which had been proposed as its basis was never made effective intrastate by the Railroad Commission of Georgia and the adjustment was not carried out.

The following table taken from an exhibit of defendants compares the contemporaneous Jacksonville combination rates which were collected with those suggested by defendants. The statement also shows the combination over the route of movement and the rates asked by complainant.

To Cordele from—	Jacksonville combination rates paid.	Combination over route of movement.	Suggested Jacksonville combination.	Asked by complainant.
Branford.....	\$6.40	\$4.90	\$5.30	\$4.70
Fort White.....	6.30	5.00	5.20	4.90
Webster.....	6.60	6.10	5.50	6.00
Live Oak.....	6.20	5.10	5.10	4.40
Altoona.....	6.80	6.20	5.70	6.00
Mayo.....	17.30	6.60	6.30	5.90
Alton.....	17.30	6.30	6.30	6.30
Day.....	7.30	6.60	6.20	5.90

¹ Increased to \$7.40 subsequent to movement.

In some instances the rates proposed by defendants are equal to or lower than the rates asked by complainant. In the cases where the latter are lower than the rates proposed by defendants they are combinations by a route over which none of the shipments moved, i. e., via Haylow, Ga., at which point the Atlantic Coast Line and Georgia Southern & Florida have never interchanged freight.

We have frequently found that a fair measure of the reasonableness of a joint rate which exceeds a combination between the same points over the same route is the lowest combination over the route of movement which would apply if the joint rates were canceled. *Boldt Co. v. C., B. & Q. R. R. Co.*, 51 I. C. C., 491.

There were assigned for hearing with this complaint such portions of fourth section application No. 703, filed by the Atlantic Coast Line, as seek authority to continue to charge for the transportation of cotton seed from Fort White to Cordele lower rates than are contemporaneously maintained on like traffic from Branford and other intermediate points. Defendants did not attempt to justify the fourth section departures, and the application will be denied to the extent involved herein.

We find that the rates charged were and that the present rates are unreasonable to the extent that they exceeded and exceed the lowest combinations over the routes of movement; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged in the amount of the difference between the charges paid and those which would have accrued on the basis of the rates herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with rule V of the Rules of Practice.

We further find that the rates proposed by defendants, when increased by the amounts authorized by us in *Increased Rates, 1920*, 58 I. C. C., 220, will not be unreasonable for the future. However, as some would violate the fourth section no order for the future will be now issued, but defendants will be expected to establish within 60 days after the service of this report rates on the basis of those proposed, to accord with the provisions of the fourth section.

No. 11531.

APPALACHIAN MARBLE COMPANY, INCORPORATED,
v.
DIRECTOR GENERAL, AS AGENT, AND SOUTHERN
RAILWAY COMPANY.

Submitted April 15, 1921. Decided September 23, 1921.

Rate on marble spalls, in carloads, from quarries in the vicinity of Knoxville, Tenn., to that point, during federal control, found not unreasonable or unduly prejudicial. Complaint dismissed.

Daniel J. Kelly for complainant.

C. J. Rixey, jr., and W. N. McGehee for defendants.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AITCHISON, AND LEWIS.
BY DIVISION 1:

Exceptions were filed by complainant to the report proposed by the examiner and the case was orally argued.

Complainant is a corporation engaged in quarrying and finishing marble. It has a plant for crushing, dressing, and finishing marble within the switching limits of Knoxville, Tenn., and has two marble quarries about 4 miles east of Knoxville at the junction of the Holston and French Broad rivers. By complaint, filed June 11, 1920, it alleges that the rate on marble spalls, or marble chips, in carloads, from its quarries to its crushing plant was and is unjust, unreasonable, and unduly prejudicial. We are asked to award reparation on certain shipments that moved between June 25, 1918, and December 31, 1919, and to prescribe a reasonable rate for the future. As the shipments moved intrastate, the prayer for the future will not be considered. Except where otherwise indicated, rates will be stated in cents per net ton.

Marble that is not large enough for commercial sizes is classed as waste marble, or spalls, which are used in making lime and, in blast furnaces, for fluxing. Crushed or pulverized marble and crushed spalls are used for agricultural purposes, for making stone concrete, and for other purposes.

The shipments in question moved over the Southern and charges thereon were collected at the applicable rate of 40 cents.

Prior to June 25, 1918, defendants published commodity rates on marble block, from complainant's quarries to its plant, "to be sawed or finished and reshipped," of 2 cents per 100 pounds or 40 cents, minimum 50,000 pounds; and on marble spalls of 20 cents

per gross ton, minimum 25 gross tons, applicable on intrastate traffic only. On that date these rates were increased under the authority of general order No. 28 of the Director General of Railroads to 80 cents on marble blocks and 40 cents per gross ton on marble spalls. In November, 1918, defendants advised complainant that the former rate of 2 cents per 100 pounds or 40 cents on marble block "to be sawed or finished and reshipped," being a charge for service on freight in transit, was exempt from general order No. 28. On July 15, 1919, that rate was reduced to 40 cents and refund was made on that basis.

Complainant claims, and defendants deny, that the rate on spalls was, in reality, a transit arrangement similar to the rate on marble blocks "to be sawed or finished and reshipped." The 40-cent rate on spalls was a local rate. Proportional rates were published from the quarries to Knoxville of 20 cents on marble block and 10 cents on marble spalls, applicable on through shipments only, and those rates were not assailed.

Marble spalls sell for \$2 or \$2.50 per ton f. o. b. Knoxville; marble blocks are worth from \$2.50 to \$4 per cubic foot. The average charge on these shipments was \$17.20 per car, for an average loaded haul of nearly 12 miles. Complainant cites a switching rate of \$6.50 per car on marble spalls from quarries on the Knoxville river-front extension east of the Holston River to a lime kiln near the east end of this branch, but that charge covered a much shorter haul and dissimilar services.

Competing marble quarries with crushing plants are located at Mascot and Strawberry Plains, Tenn., 14 and 17 miles, respectively, east of Knoxville on the main line of the Southern Railway, but it is not shown that these plants shipped spalls to Knoxville on local intrastate rates. The complaint brings in issue only the local intrastate rate on spalls from the quarries to Knoxville, and our conclusions will be directed to that issue without prejudice to related questions with respect to outbound shipments of crushed marble.

In *Lehigh Portland Cement Co. v. Director General*, 58 I. C. C., 429, we found reasonable a rate of 20 cents on crushed stone from quarries to mills at Mitchell, Ind., for distances of 2.41 to 3.12 miles with practically no terminal service at quarries or mills. In *Marble Cliff Quarries Co. v. Director General*, 63 I. C. C., 339, we found that 20 cents was a reasonable rate on crushed stone from crushing plant to pulverizing plant at Marble Cliff, Ohio, for a 1-mile haul where the placement of empties and spotting of loaded cars on private tracks is performed by the shipper.

We find that the rate charged on complainant's shipments was not unreasonable or unduly prejudicial. The complaint will be dismissed.

No. 11751.

SAMUEL D. WEST

v.

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY AND
DIRECTOR GENERAL, AS AGENT.

Submitted April 21, 1921. Decided September 28, 1921.

Rate on apples in barrels, in carloads, from Westville, Okla., to Fayetteville, Ark., found unreasonable. Reparation awarded.

Samuel H. West for complainant.

L. P. Nash, M. G. Roberts, and John F. Finerty for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by defendants to the report proposed by the examiner.

Complainant, a grower and shipper of apples at Westville, Okla., alleges that the rates charged by defendants on 29 carloads of apples, in barrels, shipped during September, October, and November, 1919, from Westville to Fayetteville, Ark., were unreasonable. We are asked to award reparation. Rates will be stated in cents per 100 pounds.

The shipments moved over the St. Louis-San Francisco, 32 miles, and charges were collected at rates of 16.5 cents and 19 cents. The rate applicable was a class-B rate of 16.5 cents, governed by exceptions to the western classification, and some of the shipments were overcharged. On December 31, 1919, a commodity rate of 10 cents, minimum 24,000 pounds, was established.

Defendants state that the subsequently established rate was on a parity with the rates on apples between points in the same territory for hauls approximating 32 miles. Complainant contends that the rates assessed were unreasonable to the extent that they exceeded 10 cents.

The 16.5-cent rate, based on the minimum weight of 24,000 pounds, yielded \$39.60 per car and about \$1.24 per car-mile; and the 10-cent rate yields 75 cents per car-mile.

We find that the rate applicable was unreasonable to the extent that it exceeded 10 cents; that complainant made the shipments as described and paid and bore the charges thereon; that he has been damaged in the amount of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that he is entitled to reparation, with interest. Complainant should comply with rule V of the Rules of Practice.

64 I. C. C.

No. 11870.

EMPIRE COTTON OIL COMPANY

v.

DIRECTOR GENERAL, AS AGENT, ALABAMA, FLORIDA
& GULF RAILROAD COMPANY, ET AL.

Submitted May 26, 1921. Decided September 28, 1921.

Rate on peanuts, in carloads, from Greenwood, Fla., to Bainbridge, Ga., found
not unreasonable. Complaint dismissed.

H. L. Brooks for complainant.

Henry Thurtell for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant seeks reparation on five carloads of peanuts shipped in October and November, 1918, from Greenwood, Fla., to Bainbridge, Ga., alleging that the combination rate of 24 cents assessed thereon was unreasonable to the extent that it exceeded the joint rate of 22 cents established on December 6, 1918. Rates are stated in cents per 100 pounds.

The shipments, average weight 42,544 pounds, moved over the Alabama, Florida & Gulf to Cowarts, Ala., 32 miles, and beyond over the Atlantic Coast Line, a total distance of 81 miles. The 24-cent rate charged was composed of local commodity rates of 9 cents to Cowarts and 15 cents beyond.

Complainant instanced intrastate and interstate rates on peanuts in Florida, Georgia, and Alabama ranging from 15 to 24 cents for distances from 55 to 157 miles. Typical of these are rates of 15 cents from Tallahassee, Fla., to Madison, Fla., 55 miles; 22 cents from Bainbridge, Ga., to Madison, 118 miles; 20 cents from Greenwood to Ozark, Ala., 66 miles; and 20 cents from Tennille, Ala., to Bainbridge, Ga., 99 miles. These rates were not in effect at the time these shipments moved. They were published the following December, contemporaneously with the 22-cent rate from Greenwood to Bainbridge, and were lower than those previously in effect. Complainant also cites lower rates on commodities other than peanuts

from Greenwood to Bainbridge, but the commodities selected are not comparable.

The rates generally, both class and commodity, between Greenwood and Bainbridge are constructed on the combination of locals to and beyond Cowarts. The subsequently established 22-cent rate represented a shrinkage of 1 cent in each of the components of the Cowarts combination.

Defendants compare the rate assailed with the rates under the Railroad Administration's distance scale of 12 cents to Cowarts and 15 cents beyond, a total of 27 cents; and with what the combination would have been by using intrastate local distance rates then in effect for the distances to and beyond Cowarts, namely, in Alabama 27.5 cents; in Georgia 27 cents; and in Florida 35 cents. Comparison is also made with the rates for two-line movements in those states which are arrived at by deducting 10 per cent from the combination of the local rates for the distances to and beyond Cowarts. For the two-line haul of 81 miles, this results in a rate of 25 cents under the Alabama scale, of 24 cents under the Georgia scale, and of 32 cents under the Florida scale.

The unreasonableness of a rate is not established by its subsequent reduction, and such other evidence as has been adduced is insufficient to warrant such a conclusion.

We find that the rate assailed was not unreasonable. The complaint will be dismissed.

No. 11880.¹

MERCHANTS COAL & COKE COMPANY

v.

DIRECTOR GENERAL, AS AGENT, PITTSBURGH, CINCINNATI, CHICAGO & ST. LOUIS RAILROAD COMPANY,
ET AL.

Submitted May 23, 1921. Decided September 28, 1921.

Rates charged on lump coal, in carloads, from Eldnar Mine and Cantine, Ill., to Rose Hill, Ill., and from Cantine to Jefferson Park, Ill., during federal control, found not unreasonable. Complaint dismissed.

John Rasmusson for complainant.

Royal McKenna, William Burger, and Guernsey Orcutt for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation dealing in coal at Chicago, Ill., seeks reparation on four carloads of lump coal shipped from Cantine and Eldnar Mine, Ill., to Rose Hill and Jefferson Park, Ill., during the spring of 1919, alleging that the rates charged were unreasonable. Rates will be stated in amounts per net ton.

Cantine and Eldnar Mine are in the Belleville group in Illinois, approximately 15 miles east of East St. Louis, Ill. Rose Hill and Jefferson Park are local points on the Chicago & North Western within the outer-zone switching limits of Chicago.

One carload was shipped from Eldnar Mine and one from Cantine to Rose Hill. The remaining two carloads moved from Cantine to Jefferson Park. The shipments from Cantine moved over the Pittsburgh, Cincinnati, Chicago & St. Louis to East St. Louis and the Chicago & Alton to Chicago, where they were turned over to the Chicago & North Western for delivery. The shipment from Eldnar Mine moved over the Louisville & Nashville to East St. Louis and the above-described route beyond. Over the routes of movement no joint rates were in effect and the rates assessed were made up of \$1.47 and \$1.36 from Eldnar Mine and Cantine, respectively, to

¹ This report also embraces No. 11880 (Sub-No. 1), Same v. Director General, as Agent, Pittsburgh, Cincinnati, Chicago & St. Louis Railroad Company, et al.

Chicago, and the local rates of 60 cents and 75 cents from Chicago to Rose Hill and Jefferson Park, respectively.

Contemporaneously a joint rate of \$1.52 applied from Eldnar Mine to Rose Hill over several routes which did not include the Chicago & Alton as an intermediate carrier. This rate was also maintained to Weber and Greenwood, Ill., points on the Chicago & North Western within the switching limits of Chicago. No joint rate was in effect over any route from Cantine to Rose Hill, but a rate of \$1.47 applied from that point to Ravenswood, Ill., a station about 1 mile south of Rose Hill. This rate was also maintained from Cantine and other points in the Belleville group to Jefferson Park and near-by points over certain routes, none of which included the Chicago & Alton. Effective December 31, 1919, an arbitrary of 10 cents over the rates to Chicago was established to Rose Hill and Jefferson Park, applicable in connection with the routes of movement. Complainant seeks reparation on all shipments to the basis of the rate of \$1.47.

At the time of shipment several embargoes were in effect, but complainant admitted that there was an open route from Cantine to Jefferson Park over which the rate of \$1.47 applied. The record warrants the conclusion that all the cars were specifically routed to Chicago. The ultimate destinations were not disclosed until after the shipments began to move, and, on certain of the cars, not until after arrival in Chicago. The rates to Chicago were the same over all routes.

Defendants presented comparisons of rates on coal from various groups of mines in Illinois to numerous points in Missouri, Kansas, Iowa, and Arkansas, which show that the rates to those states are considerably higher for approximately the same or lesser distances. Other comparisons submitted show that the rates assailed compared favorably with the rates from mines in eastern Kentucky, Tennessee, West Virginia, Ohio, and Pennsylvania to points in central territory for comparable distances. Furthermore, they assert that the service from Chicago to Jefferson Park and Rose Hill is exceptionally expensive because the movement for the entire distance is over elevated tracks.

The distance from the points of origin to Rose Hill and Jefferson Park over the routes of movement is approximately 300 miles. The rates assailed, \$1.96, \$2.07, and \$2.11, yielded ton-mile earnings of 6.5, 6.9, and 7 mills, respectively. A rate of \$1.47 would yield 4.9 mills per ton-mile.

We find that the rates assailed were not unreasonable. The complaint will be dismissed.

No. 11478.

NEBRASKA SEED COMPANY

v.

DIRECTOR GENERAL, AS AGENT, CHICAGO & NORTH
WESTERN RAILWAY COMPANY, ET AL.

Submitted March 10, 1921. Decided September 28, 1921.

Rates on white-clover seed in carloads, from Gilby, Grand Forks, and Michigan, N. Dak., to Omaha, Nebr., found not unreasonable or unduly prejudicial. Complaint dismissed.

H. D. Bergen and *C. E. Childe* for complainant.

F. G. Dorety and *R. J. Hagman* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by defendants to the report proposed by the examiner, and the case was orally argued before us. We have reached conclusions differing in one respect from those recommended by him.

Complainant is a corporation engaged in the wholesale seed business at Omaha, Nebr. By complaint filed May 15, 1920, it alleges that the rates charged on six carloads of white-clover seed shipped between October 30, 1919, and January 20, 1920, inclusive, from Gilby, Grand Forks, and Michigan, N. Dak., to Omaha, were, and that the present rates are, unreasonable and unduly prejudicial. We are asked to award reparation and to establish reasonable and non-discriminatory rates for the future. Rates will be stated in cents per 100 pounds.

Grand Forks and Michigan are on the Great Northern; the former, a junction point with the Northern Pacific, is 1 mile west, and the latter 55 miles west, of the Minnesota border. Gilby is a branch-line point on the Northern Pacific, 26 miles north of Grand Forks. Three cars originated at Michigan and one at Grand Forks. They moved over the Great Northern to Sioux City, Iowa, 494 and 462 miles, respectively; thence over the Chicago, Burlington & Quincy to Omaha, 139.7 miles. The short-line distance from Sioux City to Omaha is 101 miles. Charges were assessed at the applicable combi-

nation class-A rates of 77 and 68.5 cents, composed of rates of 65 cents from Michigan and 56.5 cents from Grand Forks to Sioux City, and 12 cents beyond. The two remaining shipments originated at Gilby and were assessed the combination class-A rate of 77.5 cents, made up of a rate of 37.5 cents to Minnesota Transfer, Minn., 334 miles over the Northern Pacific, and 40 cents beyond, a short-line distance of 351 miles. The rates now in effect are the above rates increased by the amounts authorized in the general increase of 1920.

Clover seed is rated class A, minimum 30,000 pounds, in western classification, and moves almost entirely on class rates. It loads considerably in excess of the minimum weight, complainant's shipments averaging 59,142 pounds. The value of clover seed during the period of movement ranged from \$22 to \$27 per 100 pounds; the usual range is from \$10 to \$18. Pilferage and leakage give rise to loss and damage claims. It is not produced in North Dakota in any great quantity, and the movement from stations in that state is sporadic.

Complainant does not attack the reasonableness of the class-A rating on clover seed, nor did it introduce any evidence to show that the class-A rates making up the combinations to Omaha were unreasonable. Its complaint is directed mainly against the higher rates it has to pay in comparison with its competitors at St. Paul, Minn., St. Louis, Mo., and Chicago, Ill. The following table shows the rates to these markets from the points of origin under consideration as of the time of movement, the rates to Chicago and St. Louis being combinations of class-A rates, based on St. Paul:

To—	From Gilby.			From Grand Forks.			From Michigan.		
	Dis- tance.	Rate.	Ton- mile re- venue.	Dis- tance.	Rate.	Ton- mile re- venue.	Dis- tance.	Rate.	Ton- mile re- venue.
	<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>	<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>	<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>
Omaha.....	685	77.5	22.6	563	68.5	24.3	594	77	26
St. Paul.....	346	37.5	21.7	320	34	21.3	357	42.5	23.8
Chicago.....	742	69	18.6	716	65.5	18.3	755	74	19.6
St. Louis.....	916	70	15.3	890	66.5	14.9	941	75	15.9

Defendants contended that the rates from Gilby to Minnesota Transfer, and from Grand Forks and Michigan to Sioux City were depressed because of the close proximity of these points to Minnesota, where relatively low intrastate rates were in effect. Similarly they asserted that the rate from Sioux City to Omaha was depressed by the Iowa intrastate rate. They submitted a number of comparisons to show that the rates to and beyond the junctions, and the sum of these rates, were as low as or lower than the class-A rates pre-

scribed by us for similar distances in other territories where transportation conditions, if anything, are more favorable. Defendants point out that the lower rates to St. Louis and Chicago result mainly from the low scale of class rates in effect from St. Paul to these points, of which the St. Paul to Chicago rates are the controlling factor, the St. Paul to St. Louis rates having been established many years ago on a basis 5 per cent over the St. Paul to Chicago rates. The effect of water and carrier competition upon these rates has been recognized by us in *Burnham, Hanna, Munger Co. v. C., R. I. & P. Ry Co.*, 14 I. C. C., 299; and *Indianapolis Freight Bureau v. C., C. & St. L. Ry. Co.*, 16 I. C. C., 276. Moreover the lines from St. Paul to Chicago and St. Louis pass through territory of heavier traffic density than that served by the carriers which transport commodities from North Dakota to Omaha. The fact that the combination of rates from the points of origin to Omaha is higher for shorter distances than the combination of rates from the same points to St. Louis and Chicago does not of itself warrant a finding that the rates to Omaha are either unreasonable or unduly prejudicial. Comparisons based upon distance alone have but little value. *Commercial Club of Greeley v. C. & S. Ry. Co.*, 53 I. C. C., 66, 74; *New York Commission of Highways v. Director General*, 55 I. C. C., 619, 623.

Complainant on brief and on argument stresses the fact that, with the exception of a few northbound commodity rates from Omaha to points in southeastern North Dakota for one-line hauls, there are no through individual or joint class or commodity rates between North Dakota points and Omaha. The establishment of through routes and joint rates is not asked, and, so far as the record discloses, is not shown "to be necessary or desirable in the public interest" as required by section 15(3) of the interstate commerce act.

We find that the rates assailed were not and are not unreasonable or unduly prejudicial.

The complaint will be dismissed.

64 I. C. C.

No. 11791.

SOUTH CHESTER TUBE COMPANY

v.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY,
DIRECTOR GENERAL, ET AL.

Submitted May 23, 1921. Decided September 28, 1921.

Rates on wrought-iron pipe, in carloads, from Chester, Pa., to Lawton, Okla., found not unreasonable, unjustly discriminatory, or unduly prejudicial. Complaint dismissed.

Marshall H. Diverty for complainant.

Geo. E. Schnitzer and *A. B. Enoch* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

The complaint attacks the rates charged on seven carloads of wrought-iron pipe, shipped in November, 1917, from Chester, Pa., to Lawton, Okla., as unreasonable, unjustly discriminatory, and unduly prejudicial. We are asked to prescribe reasonable rates for the future and to award reparation. Rates will be stated in amounts per 100 pounds, and are those in effect prior to general order No. 28 of the Director General of Railroads.

All of the shipments were routed by complainant beyond St. Louis, Mo., by way of the Missouri, Kansas & Texas to McAlester, Okla., and the Chicago, Rock Island & Pacific, hereinafter called the Rock Island, beyond. The rate assessed on five of the shipments was a combination of \$1.143, composed of a fifth-class rate of 40 cents to St. Louis, a proportional commodity rate of 29.3 cents to McAlester, and a fifth-class rate of 45 cents for the distance traversed of 232.4 miles beyond. The tariffs provided for application of the short-line mileage, and the rate applicable from McAlester to Lawton based on the short-line mileage of 210 miles was 42 cents. These shipments were, therefore, overcharged 3 cents per 100 pounds. Prompt refund of this overcharge, with interest, should be made. For reasons not disclosed, two of the shipments were delivered by the Missouri, Kansas & Texas to the Rock Island at White City, Kans., by which junction a combination rate of \$1.085 applied and was assessed.

Contemporaneously a combination rate of 69.3 cents, applicable by way of St. Louis and all the Mississippi River crossings above, was in effect from Chester to McAlester, Lawton, and other Oklahoma group points, composed of a fifth-class rate of 40 cents to the river and a proportional commodity rate of 29.3 cents beyond. A similar combination applied from Chester to Lawton and other Oklahoma points by way of Memphis, Tenn., composed of a sixth-class rate of 35 cents to Memphis, and a proportional rate of 34.3 cents beyond. The southwestern lines' tariff naming these proportional rates carried routing restrictions of the carriers parties thereto, the Rock Island providing that from St. Louis to Lawton the movement should be over its own rails or by way of its Missouri River junctions. Thus there were several available routes by which the combination rate of 69.3 cents would have been applicable if complainant had left the routing open or observed the routing restrictions contained in the tariff. The shipments were routed by way of McAlester in order to give the Missouri, Kansas & Texas the benefit of the long haul from St. Louis, on the erroneous assurance of a soliciting agent for that carrier that the 69.3-cent rate applied via that junction. Discovery of the error came too late for rerouting of the cars.

Complainant asks for the establishment of rates for the future, but its only concern is to secure reparation in the amount that the charges paid exceeded those which would have accrued if the 69.3-cent rate had been applicable to its shipments. It concedes that the rate charged for the movement to St. Louis was reasonable, but contends that the rates applicable for the movement beyond were unreasonable. In substantiation of this contention it relies solely upon the fact that the distance of 798.4 miles from St. Louis to Lawton by the route directed by complainant is less than the distance of 840.5 miles by way of the Missouri, Kansas & Texas to Kansas City, Mo., and Rock Island beyond, a route over which the 29.3-cent proportional rate applied, and is also less than the distance of 857.4 miles over the route through White City, by which route the combination rate from St. Louis amounted to 68.5 cents. Similarly it contends that since the 29.3-cent proportional rate applied for longer distances, each factor in the combination rate from St. Louis to Lawton by way of McAlester was unreasonable.

The distance from St. Louis to Lawton by way of the Rock Island direct is 767.4 miles; by way of the Wabash to Kansas City and the Rock Island beyond, 745 miles. From Kansas City the Rock Island secures a haul of 466.5 miles. Witness for the latter carrier explains that the proportional rate from St. Louis and upper Mississippi River crossings is made to equalize the combination on Memphis, which crossing is but 598.6 miles from Lawton by way of the Rock Island,

and that this proportional rate is applied by way of the Missouri River junctions of the Rock Island because Lawton is served also by the St. Louis-San Francisco, which reaches Kansas City. It is urged that the Rock Island is under no obligation, and can not be compelled, to short-haul itself by making the proportional rate from St. Louis applicable by way of McAlester and other interior junctions. In justification of the application of the class rate for the haul from McAlester to Lawton it is said that the volume of movement of this commodity between these points does not warrant the publication of a commodity rate. Exhibits were submitted to show that the 29.3-cent proportional rate from St. Louis was a depressed rate, and that the ton-mile earnings of 12.9 mills on the shipments which moved according to the routing instructions, and 11.7 mills on the shipments which moved by White City, were not unreasonable.

The fact that complainant routed the shipments through an error of an agent of one of the defendants does not of itself entitle it to an award of reparation. *Poor Grain Co. v. C., B. & Q. Ry. Co.*, 12 I. C. C., 469. Every shipper is charged with notice of the terms of interstate tariffs governing his shipments. *Western Transit Co. v. Leslie & Co.*, 242 U. S., 448. The mere showing of the existence of lower rates over other routes than the route of movement, and comparisons based upon distance alone, are insufficient to establish the unreasonableness of the rate charged. No evidence of unjust discrimination or undue prejudice was submitted.

We find that the rates assailed were not and are not unreasonable, unjustly discriminatory, or unduly prejudicial. The complaint will be dismissed.

No. 11547.

PILLSBURY FLOUR MILLS COMPANY ET AL.

v.

DIRECTOR GENERAL, AS AGENT.

Submitted April 15, 1921. Decided September 23, 1921.

Rates charged on barley flour, in straight or mixed carloads, from Minneapolis, Minn., and Omaha, Nebr., to Los Angeles, Calif., and certain other points in California, and to certain points in Arizona and New Mexico, found unreasonable. Reparation awarded.

W. H. Perry and C. C. Crellin for complainants.

John F. Finerty for defendant.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, AITCHISON, AND LEWIS.

AITCHISON, Commissioner:

Complainants are corporations engaged in the manufacture of flour at Minneapolis, Minn., and elsewhere. In their complaint, filed June 14, 1920, they allege that the rates charged by defendant for the transportation of 28 shipments of barley flour, in straight or mixed carloads, from Minneapolis and Omaha, Nebr., to Los Angeles and certain other points in California, and to certain points in Arizona and New Mexico, during the period April 1 to September 20, 1918, were unjust and unreasonable to the extent that they exceeded the rates contemporaneously applicable on wheat flour, and they ask for an award of reparation.

The shipments moved over defendant's lines and through fifth-class rates, in carloads, and fourth-class rates, in less-than-carloads, governed by western classification, were generally charged. The less-than-carload rates applied to the barley flour when shipped in carloads mixed with other grain products. The tariff carrying the through class rates provided that, if lower, the combination of local rates would apply in lieu of the through class rates. Defendant applied the combination rates to certain shipments, but on certain others from Minneapolis to Los Angeles he applied the higher class rates, which resulted in overcharges. The shipments in every case but one loaded in excess of the minimum of 60,000 pounds, and in some instances loaded in excess of 100,000 pounds. The rates per 100 pounds charged on barley flour and those subsequently estab-

lished are compared below with the rates that were contemporaneously applicable on other flours. Rates on barley flour shown under dates June 24 and June 25 were applied except on certain shipments to Los Angeles, where lower combinations of locals were assessed.

Haul.	Barley and wheat flour, fourth class (less than carload).		Barley flour, fifth class (carload).		Barley flour commodity rate (carload).	Other flour commodity rate (carload).		
	June 24, 1918.	June 25, 1918, and after.	June 24, 1918.	June 25, 1918.	Sept. 20, 1918.	June 24, 1918.	June 25, 1918.	Sept. 20, 1918.
Minneapolis to—								
Los Angeles, Calif.	\$2.00	\$2.50	¹ \$1.68	¹ \$2.10	\$0.76	\$0.70	\$0.76	\$0.76
San Diego, Calif.								
Redlands, Calif.								
San Francisco, Calif.								
Phoenix, Ariz.	1.71	2.14	1.43	1.79	.86	.80	.86	.86
Prescott, Ariz.								
Holbrook, Ariz.	1.71	2.14	1.43	1.79	.76	.70	.76	.76
Flagstaff, Ariz.								
Globe, Ariz.	2.15	2.69	1.83	2.29	1.26	.93	.99	.99
Gallup, N. Mex.	1.71	2.14	1.43	1.79	.76	.70	.76	.76
Omaha, Nebr., to Los Angeles, Calif.	1.83	2.29	² 1.60	² 2.00	.71	.65	.71	.71

¹ Lower combination rates applicable on carload shipments, minimum 30,000 pounds, to Los Angeles, Calif.

² Lower combination rates applicable Omaha to Los Angeles, viz, 95 cents prior to June 25, 1918; \$1.07, June 25, 1918.

Prior to the world war barley was not used in the manufacture of flour. In January, 1918, the Food Administration promulgated an order which required a proportionate use of substitutes for wheat flour and complainants thereupon commenced the milling of barley flour. As that commodity was not included in the current transcontinental tariff which published commodity rates to this territory on "Flour, buckwheat, corn, pancake, rye, or wheat," one of the complainants in March, 1918, and the other in April, 1918, requested the extension of the basis applicable on other flours to the barley flour. Defendant finally published through commodity rates on that basis on one day's notice on September 20, 1918.

Complainants take the position that the rate on barley flour should not have exceeded the rate contemporaneously in effect on other kinds of flour. The commodities are practically identical from a transportation standpoint, except that barley flour was, if anything, slightly less valuable on the average than wheat flour during the period in question. The Director General eventually extended the application of the general flour rate to include barley flour. Complainants urge that shipments which moved in the interim should not be penalized because of defendant's delay in publishing the rate.

Reference is made to a tariff which applied contemporaneously on traffic from Minneapolis to north Pacific coast points in which under

the designation "Flour," barley flour was accorded the same rate as the other varieties. The same rates applied on those commodities from Minneapolis to all other sections of the country, and the tariff carrying the rates assailed was the sole exception to the general rule.

Under a mixing rule in defendant's tariff, articles mentioned in the same item could be shipped in mixed carloads at the rate shown for that item. If barley flour had been included in the item carrying the commodity rate on flour, the shipments which were charged the less-than-carload rate would have been accorded the carload rate.

Defendant contends that the movement of barley flour was not heavy enough to warrant the establishment of the wheat-flour rate, as in the case of corn and rye flour. Complainants, on the other hand, assert that there was no westbound movement of rye flour from Minneapolis and only a comparatively light movement of corn flour, except during the period when these commodities, like barley flour, were used as substitutes for wheat flour. Defendant further contends that barley flour was a new commodity, developed because of the war, and that the shipments upon which reparation is sought were emergency movements. The record indicates, however, that there were other shipments of barley flour, of which no record was kept since they moved on the wheat-flour basis. The shipments can not be accurately termed sporadic movements, and were emergency movements only in the sense that they were caused by the exigencies of war.

Defendant relies upon our decision in *Liggett & Myers Tobacco Co. v. Director General*, 58 I. C. C., 196, wherein we found not unreasonable class rates applicable on eastbound shipments of smoking tobacco and cigarettes from San Francisco to St. Louis and New York. In that case only 18 cars moved during a period of about a year, and only two cars subsequent to the reduction of the rate. The rate assessed was not shown to have been unreasonable *per se* or in comparison with those applicable on similar commodities. The sole basis for reparation was the fact that the carriers subsequently published a lower commodity rate upon representations that the movement would be large.

The rates on wheat flour are said to be on a very low basis, owing to the great volume of movement and the keen competition with Canadian wheat moving via Vancouver and Puget Sound, which was reflected in the flour rate. It is not clear why this explanation would not apply equally to the rates to the north Pacific coast and to those portions of the combination rates to Los Angeles which were on the wheat-flour basis. To illustrate the comparatively low basis of rates maintained on wheat flour, defendant compared them with commodity rates on other articles rated fifth class in western classi-

fication, such as bags, prepared flour, rough glass, rough castings, plate and sheet iron, and macaroni. While rates on the commodities named are higher than those maintained on wheat flour, they are lower than the class rates assessed on complainants' shipments. No similarity from a transportation standpoint is shown between barley flour and the commodities cited.

Defendant does not deny that the transportation characteristics of barley and other kinds of flour, aside from the difference in value in favor of the former, are practically identical, and there appears on this record no justification for rates on barley flour which generally exceeded those contemporaneously applicable on other flours by from 80 to over 100 per cent. Defendant, however, contends that the volume of movement did not warrant the lower rate applicable on flour generally. While we have said in numerous cases that volume of tonnage is an important element in the determination of reasonable rates, it has also been repeatedly held that it is only one of the many elements to be considered. Car loading, value, earnings, similarity of transportation conditions, and general transportation characteristics of the commodities are other items of importance. Moreover, the transportation characteristics of barley flour as compared with other flours are so similar as to make it difficult to view the transportation of this commodity as something separate and distinct from the general flour movement, which it in part may be said to have supplanted.

We find that the rates charged were unreasonable to the extent that they exceeded the rates contemporaneously applicable on wheat and other kinds of flour; that complainants made the shipments as described and paid and bore the charges thereon at the rates herein found unreasonable; that they have been damaged to the extent of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that they are entitled to reparation, with interest. Complainants should comply with rule V of the Rules of Practice.

No. 12929.

INTERSTATE RATES ON GRAIN, GRAIN PRODUCTS, AND
HAY, IN CARLOADS, BETWEEN POINTS IN THE WEST-
ERN AND MOUNTAIN-PACIFIC GROUPS.

Submitted September 3, 1921. Decided October 20, 1921.

Rates on grain, grain products, and hay within the territory embraced within the western and mountain-Pacific groups found unjust and unreasonable for the future to the extent shown in the report.

Clyde M. Reed and *P. A. Conway* for Public Utilities Commission of Kansas; *Amos A. Betts* for Arizona Corporation Commission; *Dwight N. Lewis*, *Fred P. Woodruff*, and *Charles Webster* for Board of Railroad Commissioners of Iowa and Iowa Farm Bureau Federation; *Paul A. Walker* for Corporation Commission of Oklahoma; *George E. Erb* for Public Utilities Commission of Idaho; *F. W. Putnam* and *Ivan Bowen* for Railroad and Warehouse Commission of the State of Minnesota; *H. M. Huntington* for Wyoming Public Service Commission; *Frank Milhollan* for Board of Railroad Commissioners of North Dakota; *Thorne A. Browne* for Nebraska State Railway Commission; *Carl D. Jackson* for Railroad Commission of Wisconsin; *H. Casaday* for Public Utilities Commission of Colorado and Colorado Alfalfa Meal Millers Association; *John E. Benton* for the state commissions above named, and for Railroad Commission of the State of California, Public Service Commission of Louisiana, Public Service Commission of Missouri, Board of Railroad Commissioners of the State of Montana, Public Service Commission of Nevada, New Mexico State Corporation Commission, Public Service Commission of Oregon, Board of Railroad Commissioners of South Dakota, Public Utilities Commission of Utah, and Department of Public Works of Washington; *Frank L. Smith*, *H. M. Slater*, and *Harvey E. Wood* for Illinois Commerce Commission.

Walter Condran for state of Iowa and grain shippers of Iowa; *J. W. Raish* and *J. J. Murphy* for producers and shippers of grain, grain products, and hay of North Dakota.

Clifford Thorne for American Farm Bureau Federation and Farmers National Grain Dealers Association; *G. W. Hoffman* for
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North Dakota Farm Bureau Federation; *J. W. Shorthill* for Farmers National Grain Dealers Association; *D. J. Simms* for National Hay Association; *W. K. Vandiver* for Grain Dealers National Association; *A. Sykes* for Corn Belt Meat Producers' Association; *M. P. Kinkaid*, *Albert Jefferis*, *C. F. Reavis*, *Robert Evans*, *W. E. Andrews*, and *M. McLaughlin* for Nebraska grain dealers; *John A. Kurtz* and *Hugh McIndoe* for grain, grain products, and hay producers of Missouri; *C. A. Lahey* for Quaker Oats Company; *M. R. Benedict* for South Dakota Farm Bureau Federation and South Dakota State Department of Agriculture.

James C. Suttie and *Nels Parsons* for Omaha Hay Exchange and Nebraska producers and shippers of hay; *J. S. Brown* for Chicago Board of Trade; *B. J. Drummond* for Cincinnati Grain & Hay Exchange; *G. Stewart Henderson* for Baltimore Chamber of Commerce; *A. F. Vandegrift* for Louisville Board of Trade; *Ray Williams* for Board of Trade, Cairo, Ill.; *H. D. Lute* for Nebraska Farm Bureau Federation; *John B. Matthaei* for Commercial Exchange of Philadelphia; *H. W. Prickett* for Utah State Bankers Association, Idaho State Bankers Association, and Chamber of Commerce & Commercial Club of Salt Lake; *Charles Rippin* for Merchants Exchange of St. Louis and St. Joseph Grain Exchange, St. Joseph, Mo.; *C. B. Ross* for Idaho Farm Bureau Federation and various Idaho commercial clubs; *W. R. Scott* for Board of Trade of Kansas City; *W. P. Trickett* for Minneapolis Traffic Association; *J. L. Bowlus* for Milwaukee Chamber of Commerce; *F. H. Baldy* for Grain & Hay Exchange of Pittsburgh; *Lawrence G. Wilson* for Casa Grande Farmers Association and Arizona State Farm Bureau; *H. B. Dorsey* for Texas Grain Dealers Association.

J. N. Davis for Chicago, Milwaukee & St. Paul Railway, and respondents generally; *R. H. Widdicombe*, *A. B. Enoch*, *Henry Blakeley*, *P. H. Burnham*, *J. E. Courtney*, *Thomas R. Farrell*, *F. B. Houghton*, *L. C. Mahoney*, *W. W. Miller*, *H. M. Pearce*, *W. A. Rambach*, *F. B. Townsend*, *L. T. Wilcox*, and *C. Schonfelder* for individual respondents.

REPORT OF THE COMMISSION.

AITCHISON, *Commissioner*:

This is a proceeding of investigation into the reasonableness and propriety of the level of interstate rates for the transportation of grain, grain products, and hay, in carloads, between points in the territory embraced in the western and mountain-Pacific groups, as defined in *Increased Rates, 1920*, 58 I. C. C., 220, which will also be referred to as Ex Parte No. 74. The relationship between particular localities and markets is not involved. Only line-haul rates will here be considered.

By general order No. 28 of the Director General of Railroads, effective June 25, 1918, commodity rates on wheat were increased 25 per cent, but not exceeding an increase of 6 cents per 100 pounds. Other grains, much of which theretofore had moved at rates lower than those contemporaneously effective on wheat, were by that order put upon the wheat-rate basis. The rates then in effect upon flour and other mill products were increased 25 per cent, not exceeding 6 cents per 100 pounds, but were required to be not less than the new rates on wheat. Hay received an increase of 25 per cent. These increases applied alike to interstate and intrastate traffic.

On July 29, 1920, we permitted the carriers to increase their interstate rates on these and other commodities 35 per cent within the western group, 25 per cent within the mountain-Pacific group, and $33\frac{1}{2}$ per cent between these groups. Such increases became effective August 26, 1920. By various proceedings, similar increases were made in the intrastate rates within the groups now before us.

The increases vary somewhat in different sections and on different commodities. For example, in Kansas, at the request of the authorities of the state a flat 3-cent per 100 pounds increase was substituted for the percentage increase, resulting in higher percentages on short than on long hauls. The aggregate increase since June 24, 1918, is greater in many instances on coarse grains than on wheat, for the reason that general order No. 28 eliminated differentials in favor of coarse grains that had long been maintained in certain sections of the country. These differentials were not uniform, and may be said to have ranged from one-half cent to $2\frac{1}{2}$ or 3 cents per 100 pounds. The percentage increases advanced long-haul rates a greater number of cents than short-haul rates.

Generally speaking, the present freight rates on wheat are from 50 to 70 per cent greater than they were prior to June 25, 1918. The increases on corn, oats, and barley generally approximate, and in some instances exceed, 80 per cent. The rates on hay are approximately 70 per cent greater than they were prior to June 25, 1918. In many instances the rates on these commodities have been subjected, during the past few years, to much greater increases than above indicated. On the other hand, there have been some reductions from the peak level. For instance, rates on grain to the Gulf ports for export, which were substantially increased during and subsequent to federal control, have been reduced in amounts ranging from 1 to $5\frac{1}{2}$ cents per 100 pounds, influenced by reductions made by eastern lines to the Atlantic seaboard.

This proceeding was instituted following the filing of a petition by the Public Utilities Commission of Kansas, on behalf of all grain and hay shippers of that state, calling attention—

to the exigencies of the hay and grain industries, and to suggest * * * the advisability, desirability, and necessity of prompt consideration of the matter of reduction in interstate freight rates on grain, grain products, and hay in the western group, with a view to affording relief commensurate with the needs of these industries.

Representatives of state commissions, grain and hay markets, and various interests appeared. All will be referred to as petitioners. The carriers will be referred to as respondents.

The issue thus presented requires us to examine into the reasonableness of the existing rates, and to test these by the standards employed in proceedings brought under section 1 of the interstate commerce act. At the outset it is important for us to consider the status of the agricultural industry in the western and mountain-Pacific territories, and inquire into the effect of the present rate standards upon both shippers and the carriers, for this phase has been stressed by petitioners.

The western farmers, including those in Illinois, in 1920 produced 75.7 per cent of the nation's wheat, 54.2 per cent of the corn, 68.4 per cent of the oats, 59.5 per cent of the rye, and 89.5 per cent of the barley. These farmers are suffering from severe readjustments, and, generally speaking, are operating at a loss or without profit. Many of them have exhausted their credit and are unable to put in crops. This distressing situation is attributed to acute deflation of farm prices, and in some instances to drought, low yields, or crop failures. In determining the causes, obviously we must bear in mind the world-wide disturbances, deflations, restrictions of credits and purchasing power, and other elements of the post-war readjustment now in progress. To an extent the distress may be considered as aggravated by the holding of large surpluses from last year's crops for higher prices, to the inability to move them because of car shortages, to land speculation, to free spending during the war, or to failure to foresee inevitable readjustment. There is evidence of reduction in demand for coarse grains and hay and of unusual supplies. The conditions as to wheat are somewhat different, because of an active export demand to meet continued foreign deficits.

In some districts the farmers had to borrow money to purchase seed for the 1921 crop, and were financially involved before it was ready for cultivation. Grain and hay produced last year under war-time costs have been sold at prices below those that prevailed during the war, and present prices for farm products are less than the readjusted production costs. Much produce, especially hay, will not reach a market. The agricultural industry in the west is heavily mortgaged and deeply indebted to the banks. It has been impossible

to liquidate many loans, and either the accrued interest has been added to the principal or foreclosures have occurred. Several profitable years must be experienced before many of the western farmers can recoup their losses. Generally speaking, the distress is least felt by farmers who either own or have a substantial equity in their lands. Renters, burdened with high cash rents, and owners who purchased their holdings at high war prices on credit, and those farmers who did not foresee the coming readjustment, are admittedly in extreme distress. Many renters have given up or will give up farming; and a scaling down of rents, claimed by respondents now to be in process, will be necessary to hold them to the lands.

While commercial loans have been reduced, agricultural loans have not been similarly reduced, and the funds of country banks are to a large extent unavailable for current commercial and agricultural needs. Farmers have been compelled to settle their debts by marketing crops at low prices. The car supply this harvest season has been good, and the new crop and holdover from 1920 have been rushed to market. The wheat movement in July and August, 1921, has been almost unprecedented. Prices of some grains have fallen from war to prewar and, in instances, to lower than prewar levels.

Fertilization of land and maintenance of farm equipment are being deferred. Many farmers are unable to make necessary improvements. The purchase of farm implements has been greatly reduced. In all sections there is an increasing delinquency or default in the payment of taxes. The financial condition in irrigated districts is reflected by increases in delinquencies in the payment of the yearly installments, which retard new government irrigation projects. The testimony is that the unprofitableness of farming is driving boys and tenants out of agriculture and into the cities.

There is an abundance of hay in the west. A large part of it is neither going to market nor being used locally. A large portion of last year's crop is deteriorating, and there is testimony that much of this year's crop would not be cut. Transportation charges constitute a large proportion of the finally delivered price of hay, much of which customarily moves considerable distances. The character, value, volume, and use of this commodity are such as to require relatively low charges for its carriage. *National Hay Asso. v. L. S. & M. S. Ry. Co.*, 9 I. C. C., 264, 306. Receipts at the markets at Kansas City, Omaha, and other points this year have been unprecedentedly subnormal. There is evidence that eastern and southern dairy and stock men are substituting local and undesirable feeds, such as slough grass, straw, and cotton stalks, because of the high delivered costs of western hay. Hay and alfalfa meal dealers and

producers insist that there is a potential demand but that the freight rates are now past the point that their products will bear. Hay can be and often is moved in low-grade equipment that is unsuitable for grain hauling, without expedited or special service, and requires proportionately a small movement of empty equipment.

There is testimony strongly tending to show that if present conditions are continued the less fertile farms will not be cultivated next year, the acreage of grains will be curtailed, and reorganization of farming must follow along lines less favorable to society and to the railroads. It is predicted that the ultimate result will be a short grain supply, higher prices, and suffering. Respondents direct attention to the fact that for the period from January 1 to August 13, 1921, the number of cars loaded with grain and grain products in the western district increased 27 per cent over the number loaded in the same period in 1920, while contemporaneously the loading of live stock, coal, coke, ore, forest products, and miscellaneous freight decreased in percentages ranging from 6 to 58. The number of carloads loaded with all freight showed a decrease of 14 per cent. The large movement to market this year does not show that the farmer can continue to operate under present production and distribution costs, as it is the result of forced marketing regardless of prices or freight rates. This testimony is opposed by the opinions of witnesses for the carriers that future acreage will not be greatly affected by an unfavorable year of readjustment, and by forced changes in farming and marketing methods and practices. But the weight of the evidence indicates that a continuance of the existing burdens must result in diminished production.

A comparison between the weighted-average price of 31 farm products and railroad freight revenue per net ton-mile shows that, beginning in 1910 and continuing until 1915, farm produce values and railroad revenues maintained a close and consistent relation; that in 1915 farm products began to ascend and advanced to a peak of 146 per cent in 1919, and then began a rapid descent to practically the prewar level in the summer of 1921. Meanwhile freight revenues continued on practically the prewar level to 1917, when they began to advance to a peak of 79 per cent, and are now 68 per cent above the 1909-1913 level.

The rise and fall of "farm prices" is illustrated by the indices compiled by the Department of Agriculture, summarized as follows:

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Date.	Wheat per bushel.	Corn per bushel.	Oats per bushel.	Barley per bushel.	Hay per ton.
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	
1911.....	86.9	55.3	38.7	75.2	\$12.83
1912.....	87.4	67.6	41.4	68.9	13.24
1913.....	78.4	59.4	36.8	53.3	11.02
1914.....	88.4	71.4	40.9	51.5	11.28
1915.....	105.2	71.2	42.5	54.1	10.50
1916.....	125.9	73.8	44.0	71.0	10.48
1917.....	200.8	129.2	62.7	107.7	13.53
1918.....	204.3	147.3	74.0	112.6	18.10
1919.....	212.8	151.5	69.5	108.9	20.45
1920.....	217.2	140.5	74.1	106.9	20.85
1921—Jan. 1.....	149.2	66.7	45.6	64.4	16.16
Feb. 1.....	149.3	62.4	41.8	57.2	15.24
Mar. 1.....	147.3	64.5	41.9	56.8	14.28
Apr. 1.....	133.5	63.0	39.3	54.4	13.61
May 1.....	110.7	59.5	36.8	49.2	13.08
June 1.....	127.4	62.5	37.9	51.6	12.52
July 1.....	112.2	62.2	35.6	50.6	12.61
Aug. 1.....	104.8	61.7	33.8	49.4	11.73
Sept. 1.....	101.2	56.2	30.1	47.0	11.70
Oct. 1.....	105.6	51.0	31.0	45.4	11.36

Readjustments in the farm costs of production are in progress, but labor and marketing costs, taxes, and all items of expense are considerably greater than before the war. Prices for products have decreased relatively more than the cost of production. The purchasing power of the farmer is restricted, with adverse effect on general business, and likewise, through reduction of inbound freight, on the revenues of the carriers. Farming, our chief industry, pays a huge freight bill on both outbound products and inbound freight.

Translating the purchasing power of the western farmers from dollars into bushels, it is clear that in most instances they must pay a far greater quantity of either corn or wheat than heretofore to secure the important commodities necessary for use in the production of their crops or for sustenance.

The evidence indicates that in numerous and not unusual instances after deducting other costs the amount remaining from the price received for their crops gives them but from 5 to 25 cents per hour for their own labor and for that of others employed on the farm; that if allowed 15 cents per hour for the time spent in producing crops of hay and grain, many farmers could not pay their taxes or the interest on their investment or mortgage indebtedness. The labor used in transporting their crops by rail to market is, they point out, paid on a much higher basis than farm labor.

While local conditions, feeding, etc., sometimes exert an influence, the farmer has little control over the price he receives for his crops. In the main these are controlled by prices set at places where the surpluses of all countries meet, and this particularly applies to the Liverpool market control over wheat. With respect to coarse grains, and to a lesser extent hay, prices rest on such primary markets as Chicago, Minneapolis, Omaha, and Kansas City. The usual local prices for

grains and hay, even for feeding or consumption, are the prices at the control markets less the freight and handling charges.

The testimony is that the freight rate now consumes such a large part of the returns of the western producer of these commodities as to be restrictive and burdensome.

In determining the reasonableness of the existing rates on grain, consideration must be given to changes in conditions since their establishment. As has been pointed out by respondents, many of the basic rates governing the transportation of grain, particularly, in times past have been considered by this Commission and by the state rate-fixing authorities. Generally, these determinations antedated the advent of the United States into the world war. Since the times when the rates were so fixed either by rate-making bodies or by the carriers, many important economic and traffic changes have occurred which lessen the weight which might otherwise now be accorded to the actions of these tribunals. The rates have been subjected to two sweeping and general rate increases, each made in a broad way and largely without reference to the specific conditions which surrounded the traffic moving under particular schedules. The changes in the economic condition of the industry—its ability to bear the existing rates—have been dwelt upon. Other changes may be pointed out.

The car-loading of a commodity is of importance in determining the rate, absolutely and relatively.

Petitioners show a greatly increased loading of grain. At Kansas City, for illustration, in the month of July, 1921, the loading of wheat was 13 per cent, corn 30 per cent, and oats 35 per cent over the loadings in July, 1913. The average loadings per car and the percentages of all traffic on six of the principal western railroads for the year ended December 31, 1920, were shown to be as follows:

	Per cent of total traffic.	Average load per car.
		<i>Pounds.</i>
Wheat.....	5.14	81,200
Corn.....	3.17	77,000
Oats.....	1.73	66,000
Other grain.....	1.14	64,000
Flour and meal.....	2.05	64,000
Other mill products.....	1.43	55,400
	14.66	-----
Hay, straw, and alfalfa.....	.96	24,800
	15.62	-----
Total products of agriculture.....	20.40	87,800
Products of animals.....	5.45	23,000
Products of mines.....	42.90	90,000
Products of forests.....	9.85	53,000
Manufacturing and miscellaneous.....	21.34	47,400

Petitioners present records showing that the loading of wheat, corn, and oats in 1920 was heavier than the loading of any of 15 important commodities moving in large volume, except coal, and in excess of that of all carload freight; that the average weight of cars employed in transportation is less than the average of those used for hauling citrus fruits and fresh meats, and less than the average for all carload freight; that the movement involves less empty haul; and that the percentage of empty to loaded car mileage is substantially less in the case of box cars than other classes of equipment.

Respondents submitted analyses to show that the transportation of grain and grain products carries unusual liabilities; that the loss and damage claims are excessive, and are practically double the ratio of payments on other traffic; that the loss and damage claims on grain are disproportionately large compared with the volume of the traffic, and settlements constitute in some instances 35 to more than 40 per cent of the aggregate of such settlements on all traffic, and run into millions of dollars.

The amount of loss and damage claims normally accruing in the course of transportation is a factor which is properly taken into account in the fixation of the rates for transportation. Presumptively, the facts in this regard as they existed contemporaneously received consideration when the basic rates were established, and for them proper compensation was made. As the values of grain and grain products increased, the money amount of each loss and damage claim naturally increased. Payments by the carriers on this account are an item of operating expense, and, as such, constituted a part of the total increased costs of operation, to meet which the Director General made his increases under general order No. 28, and because of which we permitted the general increases of 1920. But since those increases the values of grain and grain products have shrunk greatly. So far as increased loss and damage claims on account of the movement of these commodities constituted a partial basis for the increases of 1918 and 1920, that basis no longer exists to the same degree.

There has likewise been a sharp decrease in the values of the coarse grains, both absolutely and relatively, as compared with wheat. Prior to general order No. 28, quite generally throughout that portion of the western group, as defined in Ex Parte No. 74, which lies west of the Mississippi River, the rates on coarse grain were lower than the rates on wheat. The effect of general order No. 28 was to put the coarse grains on the wheat basis, and that basis has been maintained since. The propriety of such action has been sustained in *National Council Farmers' Assos. v. Director General*, 56 I. C. C., 399. It may well be that the action of the Director General was

fully justified, under the facts then existing, but with the return toward normal values and relationships in values, it is apparent that the continued application of the wheat-rate basis will discourage the movement of great quantities of these coarse grains which formerly moved freely.

The petitioners have presented exhibits filed by the defendants in *National Live Stock Shippers' League v. A., T. & S. F. Ry. Co.*, 63 I. C. C., 107, showing the average haul and car-mile earnings of grain and various other commodities over the lines of certain representative carriers in the western group. These exhibits are summarized in our report in the case cited, at page 114, and that summary need not be repeated here. Without detailing the results of a study of these exhibits, it seems to be indicated that the earnings on grain traffic are relatively somewhat high. This result would have been modified if a differential basis had been maintained between wheat and coarse grains.

On the bases of investigation and exhibits in *1915 Western Rate Advance Case*, 35 I. C. C., 497, petitioners presented an elaborate analysis attempting to develop the operating ratios on the movement of grain and tending to show that such ratios were below the average ratio applicable as to all freight traffic.

Respondents point out that grain products and hay are of higher grade than sand, gravel, stone, ores, coal, pulp wood, etc., which constitute a considerable part of "all other traffic," and that the handling of grain and grain products involves extra service and special privileges which add elements of cost. These extra privileges relate to transit, free time and freedom from demurrage charges, holding and switching cars for official inspection, and reconsignment and diversion in connection therewith. Special increased costs are those incurred to keep box cars in suitable condition, to install, distribute, salvage, etc., grain doors, and for out-of-line and indirect hauls under transit, or to reach the industry and then the market of the products. Certain of these services and expenses do not differ materially from those incidental to other commodities or expenses connected with their transportation, and other expenses indicated may be regarded as the equivalent of current maintenance.

While not contending that the distress of the grain, grain products, and hay producers is wholly attributable to the present level of freight rates, petitioners urge that a reduction in haulage charges would make it possible for consumers to buy hay, oats, corn, etc., and would result in increased movement and the saving of these commodities for society; that the producers would realize financial benefit and have increased purchasing power which would favorably react on the railroads through increased inbound freight. On the other hand, respondents deny that such a reduction would stimulate

demand, because, they say, it would probably not reduce prices to the consumer. If the movement were stimulated temporarily, it is contended that the downward trend of prices would be continued because of the surplus of certain grains, held without any visible demand. As prices are now at a low point, respondents doubt if a reduction in rates would increase feeding or consumption. They make the claim that the agricultural industry is in little different condition from other producing or manufacturing industries, and that the railroads themselves have not received during the last year within 50 per cent of the rate of return prescribed by Congress.

While consistently opposing any reduction in the rates on hay and grain, the respondents take the position that the relief sought by the petitioners is wholly insufficient in amount to yield any real relief to the average individual, who, collectively with other average individuals, constitutes the agricultural industry, and would not aid him in his distress. Obviously the relief sought is more material in the aggregate to the farmer at a greater distance from market than to one who ships for shorter distances. Based on the 1910 census, it was calculated that the annual savings per farm would range, in round figures, from \$10 to \$50, dependent upon the distance from market. Respondents seek to show that such a change would be less per bushel than frequent daily fluctuations in market prices of these grains.

Voluminous and exhaustive studies have been presented by the petitioners and respondents, analyzing the important results of operation. The details vary as to particular roads; and, as we are dealing with the roads as a whole, it is unnecessary to set out the significant statistics as to individual carriers, although they have been given consideration.

A special study of grain, grain products, and hay and straw traffic made by western railroads, representing 85,158.10 miles, for the eight-months period ended April 30, 1921, was presented. It may be summarized:

	Revenue tons carried.	Average haul.	Average revenue per ton.	Average revenue per ton-mile.
		<i>Miles.</i>		<i>Cents.</i>
Total traffic.....	389, 882, 552	214. 21	\$2. 96	1. 382
Grain and grain products.....	50, 747, 760	300. 20	3. 32	1. 106
All other traffic.....	339, 074, 792	201. 34	2. 91	1. 444
Hay and straw.....		242	3. 74	1. 545

Respondents have undertaken to show that a saving greater than the rate reduction sought by petitioners can be accomplished by improvements in the system of marketing the crop. Suggestions are made as to profits, seemingly large, and possibly inordinate, realized

by elevators in the country and at terminals; however, these facts are not clearly determinable from the showing made. Without decrying the desirability of improvements in this regard if they can be accomplished, it is not necessary for petitioners to have obtained a perfectly economical system of marketing before they call the reasonableness of their rates to our attention. It may be observed that if the maximum relief obtainable through this source, as estimated by the carriers, were to be obtained, the condition of the agricultural industry would be only partly alleviated.

The facts disclosed in the record make it appear that grain and grain products and hay, on the whole, are bearing a share of transportation charges which is disproportionate.

The financial circumstances of the carriers before us have been developed of record at great length. We deem an extended summary of this evidence unnecessary, for the essential conclusions are few and well known. Commencing about eight weeks after August 26, 1920, when the increased rates authorized in Ex Parte No. 74 became effective, the volume of traffic decreased sharply, suddenly, and unexpectedly, but the trend became upward in the mid-summer of 1921. To this precipitate decline in traffic must be attributed the failure of the carriers to receive the aggregate revenue from operations, which, it was calculated, would follow the increases so permitted. Neither during the calendar year 1920, nor during the 12 months following the increases, did the carriers, either in the country as a whole, or in the western or mountain-Pacific groups, earn an aggregate net railway operating income over about one-half of $5\frac{1}{2}$ per cent of the value of their property as tentatively fixed by us.

In the first five months of 1921 the western roads suffered more severely from general reversals than the eastern or southern roads. The decrease in net ton-miles was 26.03 per cent for western, 18.27 per cent for eastern, and 19.52 per cent for southern roads. Taking the nine-months period beginning September 1, 1920, and ended May 31, 1921, the decrease in freight traffic of the western roads was 27.68 per cent. The relative level of operating expenses was kept up by the mounting of the prices for certain essential materials and supplies, notably coal, and the maintenance of such high prices during a considerable portion of the first year of trial of the new rates. Analyzed on an operating basis, respondents show that materials and supplies which in 1916 cost 72.6 cents per train-mile transported, in the last quarter of 1920 cost \$1.4201. Fixed charges of course did not shrink as did traffic and operating revenue.

Respondents compare the quantity of labor employed in 1920, and the compensation, with like items in 1916, which is taken as a normal year. Their analysis covering all class-I roads in the United

States indicates an increase in total compensation from \$1,468,576,-394, in 1916, to \$3,698,216,351 in 1920. The number of employees increased 23.36 per cent; number of hours worked, 6.99 per cent; number of days worked, 13.36 per cent; average compensation per hour, 139.21 per cent; average compensation per day, 101.97 per cent; and average compensation per employee, 104.04 per cent. This comparison does not fully reflect increases in labor costs, as a 21 per cent increase in wages authorized by the Railroad Labor Board was in effect only 7 months of 1920.

The respondents estimate that equating to a full year the results for the nine months commencing September 1, 1920, the net railway operating income of the western class-I roads yielded a return of 2.78 per cent; freight operations, 2.54 per cent; and passenger operations, 3.43 per cent. They estimate the return for the first five months of 1921 as being at the annual rate of 1.64 per cent. The returns are stated in relation to the value set out in our findings in Ex Parte No. 74, which applied to all railroads in the western district. The reports made by the respondents for the months following those shown indicate a much more favorable return. Thus, making allowance for seasonal variations, the monthly reports of class-I roads for August, 1921, show a return at the annual rate of 6.47 per cent for the western steam roads and 5.02 per cent for the whole United States. The claim is advanced that the actual results are less favorable than appears, because important maintenance work has been postponed which would normally have been performed. This undermaintenance is estimated by respondents to be at the rate of \$188,000,000 per annum. Maintenance in recent months apparently has not been markedly subnormal. The expenditures by the western class-I roads for June, July, and August of the present year are substantially double the average expenditures for those months in the test period.

Since our decision in Ex Parte No. 74 the wages and working conditions of the employees of the carriers have been considered by the Railroad Labor Board, and many questions relating thereto have been determined by that body. On July 1, 1921, there became effective reductions estimated to average about 12 per cent in wages, and certain changes in labor rules and working conditions have also been accomplished which have lessened expense. For the entire country and upon the basis of a normal number of employees it is estimated that these reductions in wages and changes in conditions now in effect will produce a saving of about \$425,000,000 per year, and that of this amount about \$160,000,000 will accrue in the western and mountain-Pacific groups.

The cost of important commodities which enter largely into the operating expense accounts of the carriers has also decreased. With some important commodities, as, for instance, coal, the change is not yet marked as to some carriers—others have for several months shown noticeably decreased fuel costs. Many other commodities have receded to price levels approaching those of prewar times.

Neither the diminished cost of labor nor the diminished prices of materials and supplies have yet been reflected as completely in operating expenditures as must occur. Certain of the readjustments of labor rules and working conditions which have been made possible by orders of the Railroad Labor Board have not yet become fully effective. Term contracts for supplies, entered into at high price levels, still are holding the operating expenses of various carriers to levels which must be accepted as abnormal. With the expiration of these contracts, lower future costs are reasonably to be expected.

There is also every indication that the volume of traffic is on an increasing curve. This is evidenced by the steady increase in the number of carloads of revenue freight and the reduction in the number of surplus cars.

We are to administer, and, so far as possible, give force and life to all the provisions of the interstate commerce act. Section 1 requires that no more than just and reasonable rates for transportation be exacted, and in determining what is just and reasonable it has always been recognized that, among other factors, not only the cost of the service, but its value to the user, must be considered. In the exercise of our power to prescribe such rates, however, we are now required by section 15a to initiate, modify, establish, or adjust rates (as that term is defined in the section) so that carriers as a whole or in designated rate groups will, under proper standards of operation, earn an aggregate annual net railway operating income equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation.

Summarizing the situation before us, petitioners speak for a basic industry which the evidence shows is in a state of financial prostration, receiving for its products prices which approach and in some cases have fallen below prewar levels, but paying transportation costs many of which are still at the war-time peak. On the other hand, the evidence shows with equal clarity that respondents are likewise suffering from financial depression and that their net earnings have been far below the standard which has been fixed by the law, although the tendency is now upward. It becomes necessary to consider

whether rate reductions may be made on grain, grain products, and hay in western and mountain-Pacific territory which will be fair and lawful so far as the carriers are concerned.

The purpose of section 15a was undoubtedly to better stabilize the credit of railroads, reassure investors, and attract capital to the railroad industry. It is plainly our duty to do everything in our power to carry out this purpose. The experience of the past 12 months, however, has shown the limitations which surround in actual practice the operation of this provision of the law. The increases of 1920 were intended to give the carriers the specified return, and no doubt they would have done so if the volume of traffic had remained normal. Instead, it fell off sharply, and net earnings failed by a considerable margin to reach the desired mark. Nevertheless, when it became apparent that this would be the case, carriers and shippers alike agreed that it was not our duty, under section 15a, to raise rates to still higher levels. To have done this would clearly have been a vain thing, harmful alike to the country and to the carriers. The rate adjustment can not with advantage be made dependent upon fluctuations in traffic.

It is also to be noted that the duty cast upon us by section 15a is a continuing duty and looks to the future. It does not constitute a guaranty to the carriers, nor is the obligation cumulative. We are not restricted by past or present statistics of operation and earnings. These are serviceable only as they illuminate the future. What is contemplated by the law is that in this exercise of our rate-making power the result shall reflect our best judgment as to the basis which may reasonably be expected for the future to yield the prescribed return.

The conditions with which we are called upon to deal are extraordinary and unique, since they are the aftermath of a world catastrophe. The sufferings of the western farmers may be ascribed to that fact. The prostration of agriculture in this country is the product of world-wide forces. The high level of freight rates has been an obvious and tangible circumstance which has quite naturally been a target of dissatisfaction, but we are not persuaded that it has been more than a minor factor in bringing about distress.

The important thing at present, however, is not the source of the disease but the means of recovery. Whatever part freight rates may have played at the outset, many qualified to form an opinion entertain the view that the present level of these rates is one of the obstacles in the way of returning prosperity and likewise one of the obstacles to substantial reduction in the cost of living. The facts that many railroad charges are still levied at the war-time peak and the cost of living in some respects has not fallen far below it are alike

the cause of discouragement to the producer who has been unable to maintain his own prices and to the employee who has experienced a reduction of wages.

The really vital concern of the carriers, in this situation, is to promote the return of what may be deemed normal traffic, and anything which will help toward this end is greatly to their benefit. So far as a tendency downward in their rates can be induced, and so far as the reductions in wages and prices which have already been made effective can be converted into rate reductions, we are assured that the full return of prosperity will be hastened for both industry and labor. The carriers have, we feel, themselves manifested a realization of this fact in the substantial reductions in rates which, from time to time in recent months, they have voluntarily made.

The case before us relates only to certain basic commodities. Necessarily our findings and orders will be so confined. In reaching our conclusions we have taken into consideration, among other things, the facts of record in regard to the present status of these commodities and of their production and marketing, the vital importance of the industry which they represent to the country as a whole, the reductions in operating expense which respondents have experienced since our decision in *Ex Parte No. 74*, and the present trend of traffic. They are, in brief, conclusions which look to the future, in accordance with the intent of section 15a, and which are based upon our best judgment as to what will produce the best results for all concerned, including the carriers.

We find that the present rates on wheat and hay involved herein will be for the future unjust and unreasonable to the extent that they may individually include more than one-half of the increases authorized in *Ex Parte No. 74*. We further find that the present rates on coarse grains will be for the future unjust and unreasonable to the extent that they may exceed rates 10 per cent less than those herein prescribed as just and reasonable on wheat from and to the same points. This finding is not in harmony with that in *National Council Farmers Assn. v. Director General, supra*, but is based upon the present record, which shows a present different relationship of value between wheat and coarse grains than was developed in the cases mentioned, and refers to a normal condition.

We further find that the rates on commodities recognized as products of the above commodities will be for the future unjust and unreasonable to the extent that they exceed rates that would be made by continuing the relationships that now exist, except that where differentials are observed and were subjected to the percentage increases the differentials should be reduced proportionately with the rates.

The reduction in rates here required may make desirable some reductions in rates east of the western district, particularly interstate in Illinois.

In *Increased Rates, 1920, supra*, at page 252, 253, we said:

There are in the middle west a number of important grain markets through which it has been customary to maintain an equalization of the rates from important producing states to important consuming regions, under which the sum of the rates into and out of the various markets is in most cases equal. This adjustment differs from an ordinary differential basis in that it is in substance providing an equal through charge over various routes between the same points by the use of sums of proportional rates rather than the establishment of joint through rates or of transit. The application of different percentages in the various groups will result in dislocation of this equalization.

Carriers and shippers unite in recommending that this equalization be continued because of the keenly competitive situation of the various markets and of the lines of railway serving such markets. However, sufficient detailed information to cover fully the situation is not before us upon this record. We find that the grain rates into and out of these markets may be increased by the general percentages herein approved, with the understanding that the carriers will, within 30 days after the service of this report, file tariffs restoring the equalization through the grain markets now enjoying that basis. This should be done after conference with interested shippers, and, if desired, we will lend our cooperation in the premises.

It is expected that similar readjustments will be made in this case. For instance, it will be desirable to equalize via Louisville and other Ohio River crossings, in accordance with the usual practice, the through rates from the west to the south via St. Louis and Memphis.

An order will be entered in accordance with our findings if that becomes necessary. We shall expect the reductions to be made as soon as practicable and not later than November 20, 1921. The same disposition of fractions may be made as in *Increased Rates, 1920, supra*, at page 255. Rates in conformity herewith may be published to become effective on not less than five days' notice. This permission, however, applies only to the respondents and commodities before us. If necessary, interested parties may bring to our attention any outstanding orders of this Commission which may require modification to permit prompt and full compliance with our findings.

POTTER, *Commissioner*, concurring:

I concur in the majority report although in my opinion there is uncertainty as to whether we are doing the right thing. The report does not recite all of the considerations which influence my vote. This fact, coupled with the fact that we are dealing with fundamentals which go far beyond this particular case, prompts me to file a separate expression of my views.

At a time when our railways are charging lower rates and paying higher wages than carriers of other countries, it takes a lot to explain an order requiring a rate reduction when the earnings of the carriers are much less than the minimum fair return which the law prescribes.

I have the keenest appreciation that we must be watchful and alert to see whether our action is beneficial or harmful. Our action will be wrong and will need prompt correction, if the results of recent and further needed readjustments respecting operating costs do not strengthen the carriers. So far for the current year net earnings have been insufficient to compensate the carriers for their services, in the amount which the law has fixed as a fair return upon the value of their properties used in the public service of transportation. If future operating results are no better than those of the past nine months, the carriers will be unable to maintain their efficiency and render the service which is vital to the public welfare—ignoring entirely the element of common justice to the owners in the way of a fair return upon their investments. In the public interest, as well as in fairness to the carriers, there must be done without delay whatever is necessary to so improve their operating showing as to protect their credit, restore confidence, and attract new money to make betterments for which there is urgent need. To require a rate reduction under such circumstances is for us to assume a grave responsibility. Notwithstanding the risk involved, we must be guided by our best judgement, and I am convinced that a reduction should be made.

It is not clear to me that the savings made in the matter of wages and other costs since we decided Ex Parte 74 have been sufficient to justify the present reduction in its entirety, but those savings, with further prospective savings, do, in my opinion, justify our findings. The prospective future reduction of wages and other operating costs are, perhaps, more essential to justify the rate decreases than the the reductions that already have been realized. I am led to concur in the report by a firm conviction that the transportation burden on the industry and commerce of the country is too heavy and must be reduced, and that, as a part of a needed general readjustment, it can be reduced with increase of net earnings. I believe increase in traffic and a reduction of operating costs may be expected, and that increased net earnings to the carriers may be looked for.

Practically everyone admits that rates are too high. Rates too high are unjust and unreasonable and under the law must be reduced. Those who justify present rates regard them as a necessary evil—something that must be tolerated because high costs of operation prevent their reduction. That is no justification. If operating costs

are holding rates at a level too high, the thing to do is to reduce the costs.

Almost everything has been too high. The fundamental trouble with the industrial and commercial affairs of the country is that there is insufficient production and costs are too high. The latter is the cause of the former. Production in this country at the present time is far below normal needs. If normal conditions could be brought about, the industries of the country could operate normally for a long period to take care of the markets of this country, to say nothing of the markets in other countries. Normal operation of the country's industries would furnish employment to labor generally, revive markets, and increase the general buying power which the country needs. A reduction of production costs is essential to this result.

Freight rates are an important element of manufacturing and production costs. Railways are the carriers and conveyors which bind together the different departments of the great national industry in which the finished product of one individual industry becomes the raw material of another. In a large country like ours, with its long hauls and wide distribution of producing industries, it is obvious that the freight burden in its relation to other cost factors must be stable. A disturbance of the proper relation of the cost factors is bound to affect industry and may force changes and relocations which impair the general public and private interest. Until within the last few years the tendency of the factor of transportation cost in relation to other factors has been downward. Recently it has been upward, and it is now out of proper relation to other factors. Rates must be gotten back to the proper relation to other things. They must come down, and whatever is necessary to bring them down must be done.

Many of the cost factors of railway operation which forced higher rates have been substantially reduced within the last year. The most important item of cost is labor. The carriers tell us that they are now paying extravagantly high wages. If we may rely upon their statement in this regard, they are not operating their properties economically and efficiently and, therefore, operating costs may further be reduced. We have no jurisdiction over wage controversies, but we may take note of the admission of the carriers and require them to find out whether their wage scales are too high, and to lower them if they can.

If upon the presentation of the facts as the law requires, the Labor Board decides that wages are not too high, those using transportation will have to pay the bill of the organized railway employees. The shippers of the country and labor generally are en-

titled to their day in court, and the carriers are the ones to present their case, for carriers, shippers, and laborers employed in all of the country's industries which use the carriers are interested in this issue. It is true that the wage burden has increased enormously during the last few years. For the calendar year 1916 it was, for class-I railroads, \$1,468,576,394, which was the largest amount paid for any year in the history of the railroads to that date. Following the year 1916, increases, all of which were made through government agencies, beginning with the Adamson act, followed by orders of the Railroad Administration during 1918, 1919, and the first two months of 1920, and finally the decision in July, 1920, by the Railroad Labor Board, resulted in bringing up the total compensation bill of these railroads for the year 1920, based on the last eight months of the year, to an amount exceeding \$3,900,000,000. They have been reduced by the wage board as of July 1, last, by 10 or 12 per cent. The significance of these wage increases was brought out upon the hearing in this case where it was testified that if the wage burden, as it rests after the decrease of approximately \$400,000,000, as of July 1, were to be reduced by an additional \$1,000,000,000, it would be possible for the carriers to reduce freight rates approximately 18 per cent and still earn the return upon the investment in their property which the transportation act contemplates. Such a reduction, of course, would reestablish railway credit, enable carriers to secure the moneys urgently needed to maintain adequate service, and relieve the distress of disappointed multitudes of investors in railway securities. It was further testified that after such a reduction the organized railway employees would still enjoy an increase which compares favorably with the increase which organized labor in other industries has enjoyed and, of course, far in excess of increases enjoyed by labor generally. It was further testified that such an increase would be in harmony with the increase of the cost of living which has taken place.

The right and power to reduce wages rests initially with the carriers. They have no excuse for maintaining the wage levels which they say are too high. If they believe them to be too high, they should take steps to reduce them. Until they make the effort they are not entitled to refer to wages as excusing high rates. The Labor Board was created to determine such questions and shippers have the right to require carriers to resort to that tribunal. Until they have the protection of an award made under existing conditions by the Labor Board, they can not justify the present rates. On the face of things, there is nothing in the wage situation to justify a rate level entirely abnormal and which is menacing the country's welfare.

The carriers should bring the general economic situation to the attention of the Labor Board.

Some urge that we must take wage conditions as we find them, and not contemplate further wage reductions in dealing with rates. On the argument it was pointed out to us by the representatives of the petitioners that such is not the law. They urged upon us that it was the duty of the Commission to consider the broad economic question as to what rates the industry of the country could stand, and that our finding in this regard should be taken into consideration in the fixing of wages. I am inclined to the view that the opinion thus urged upon us by counsel for the petitioners is sound, although it was new to me. It seems to me there is warrant for their view in action which the Labor Board has heretofore taken.

The transportation machine of the country is being used for the benefit of the shippers and railway employees, and the owners of the machine are receiving much less for its use than the law says they are entitled to. In considering what railway employees should receive, regard should be had for what the shippers can afford to pay. The record in this case shows that the Labor Board has declined to give consideration to this broad basic question, and has refused to hear shippers while considering wage controversies. The question as to what rates are fair and reasonable is with us. If the broad economic question as to how much shippers can afford to pay is a question to be determined by us when we fix fair and reasonable rates, it will follow that the Labor Board, in considering wages, would regard our finding as one of the relevant circumstances to be taken into consideration in fixing wages. In this aspect of the case there apparently is necessity for a determination by us as to the proper rate level, and we are authorized to order a rate reduction without waiting for wages to be reduced, to a point where the carriers can prosper under the rate level which we prescribe.

LEWIS, *Commissioner, concurring:*

The record in this case reveals that horizontal percentage increases in rates on grain, grain products, and hay, made necessary by the emergency conditions under which the Commission acted in Ex Parte 74, have greatly widened the spread between producers who are near and those who are far distant from markets. This widened spread was less felt during the period when prices were high and demand exceeded supply, but its continuance under present conditions will tend to the contraction of producing and marketing areas in the west, where much of the producing territory on which the nation must depend for commercial grains and hay is far removed from

markets. We recognized similar conditions in *National Live Stock Shippers' League v. A., T. & S. F. Ry. Co., supra*, and sought to place the far-distant producer on a more favorable basis. Our finding in that case applies with equal force here. The exaggerated spread between the long and short haul rates, under the conditions that face us, will be unjust and unreasonable and, in my opinion, the rate reduction should be so applied as to tend to restore better relationships between producers, as was done in the case cited.

I am authorized by COMMISSIONER HALL to say that he joins in this expression.

64 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 1303.

RATES TO, FROM, AND BETWEEN POINTS SOUTH OF THE OHIO RIVER, INCLUDING THE MISSISSIPPI VALLEY.

PART I.

Submitted July 22, 1921. Decided October 10, 1921.

1. Proposed changes in class rates from eastern and Virginia cities and Carolina territory to Mississippi Valley territory and designated points east of that territory, and from New Orleans, La., Memphis, Tenn., and other points in Mississippi Valley territory to eastern and Virginia cities, found not justified except as indicated in the report. Respondents required to cancel suspended schedules and to file new schedules establishing rates in accordance with maximum bases prescribed.
2. Propriety of commodity rates under suspension in this proceeding reserved for subsequent consideration.

A. P. Humburg for Illinois Central Railroad Company, Yazoo & Mississippi Valley Railroad Company, and Chicago, Memphis & Gulf Railroad Company; *Charles D. Drayton* for Southwestern Lines, Gulf & Ship Island Railroad Company, New Orleans Great Northern Railroad Company, and Mississippi Central Railroad Company; *Charles J. Rixey* and *W. N. McGehee* for Southern Railway system lines, Mobile & Ohio Railroad Company, and Columbus & Greenville Railroad Company; *Edward D. Mohr* for Nashville, Chattanooga & St. Louis Railway and Louisville & Nashville Railroad Company; *Henry Thurtell* for Atlantic Coast Line Railroad Company, Seaboard Air Line Railway Company, and Clyde Steamship Company; *F. W. Gwathmey* for Nashville, Chattanooga & St. Louis Railway; *J. C. Whiteford* for Fernwood, Columbia & Gulf Railroad Company; *T. D. Geoghegan* for Gulf, Mobile & Northern Railroad Company, Birmingham & Northwestern Railway Company, and Meridian & Memphis Railway Company; *L. E. Oliphant* and *R. D. Hunter* for the central freight association carriers; and *Alexander Gawles* for Merchants & Miners Transportation Company.

H. J. Fernandez for Monroe Traffic Bureau and *C. N. Nesom* for Alexandria Chamber of Commerce.

Carl Giessow and *Edgar Moulton* for New Orleans Joint Traffic Bureau; *T. K. Riddick* and *James S. Davant* for Memphis Freight Bureau; *John B. Rucker* for Baton Rouge Chamber of Commerce; *M. W. Martin* for Helena Traffic Bureau; *F. E. Potts* for Lake Charles Association of Commerce; *P. W. Coyle* and *H. R. Brashear* for St.

Louis Chamber of Commerce; *F. C. Taylor* for Missouri Portland Cement Company; *R. G. Cobb* for Traffic Bureau of Mobile Chamber of Commerce; *E. S. Gubernator* and *F. E. Paulson* for Lehigh Portland Cement Company; *James B. McGinnis* for Memphis Merchants Exchange; *Albert E. Singleton* for Whitaker-Glessner Company; *A. F. Vandegrift* for Louisville Board of Trade; *T. M. Henderson* for Traffic Bureau of Nashville; *Morgan J. Parlin* for Belknap Hardware & Manufacturing Company; *Morgan Richards* for Selma Chamber of Commerce; *Philip Tousey* for Standard Oil Company of Louisiana; *E. B. Gaines* and *Thomas E. Grady* for Savannah Board of Trade, Savannah Cotton Exchange, Thomas E. Grady & Company, Florence Chamber of Commerce, Georgetown Chamber of Commerce, and Carolina Brick Makers Association; *Charles E. Cotterill* for Southern Traffic League; *A. J. McGehee* for Southern Interior Traffic Association and Jackson Association of Commerce; *S. S. Bridgers* for Belfont Iron Works Company, Kelly Nail & Iron Company, Marting Iron & Steel Company, Hanging Rock Iron Company, and Union Furnace Company; *Thomas L. Philips* and *W. N. Webb* for Minnesota & Ontario Paper Company, Fort Frances Pulp & Paper Company, Ltd., Itasca Paper Company, Hennepin Paper Company, Watab Paper Company, News-Scimitar Company, Item Company, Ltd., International Lumber Company, Dahlberg & Company, Inc., Celotex Products Company, and Louisiana Celotex Company, Ltd.; *J. D. McMurray* and *J. H. Tedrow* for Kansas City Hay Dealers Association and Kansas City Chamber of Commerce; *W. S. Crowl* for Michigan Alkali Company; *F. M. Renshaw* for Cincinnati Chamber of Commerce; *Frank Van Slyck* for Globe Soap Company; *J. W. Paton* for Ashland Iron & Mining Company, Ashland Steel Company, and Norton Iron Works Company; *J. A. Thomas* for American Snuff Company; *B. L. Glover* for Iola Cement Mills Traffic Association and Ash Grove Lime & Portland Cement Company; *W. P. Tingley* for Huntington Chamber of Commerce and West Virginia Rail Company; *J. H. Tench* for Florida Railroad Commission; *Frank Roberson* and *M. C. Moore* for Mississippi Railroad Commission; *C. W. Hayward* for Meridian Traffic Bureau, Emmons Brothers & Bullard, Pachuta Manufacturing Company, H. C. Dear, and various interior cities of Mississippi; *R. A. P. Walker* for American Cotton Oil Company, N. K. Fairbank Company, and Interstate Cotton Seed Crushers Association; *S. R. Barnett* for Southport Mill, Ltd.; *D. M. Pomfret* for Colgate & Company; *C. D. Dooley* for Peet Brothers; *T. S. Jackson* for Hattiesburg Chamber of Commerce, Laurel Chamber of Commerce, and Board of Trade of Brookhaven; *W. D. Hannah* for Hannah Distributing Company; *Barton Benedict* for Dunbar Molasses & Syrup Company; *George*

Butler for Columbia Commercial Club; *C. H. Meyer* for Louisville Food Products Company; *William C. Ermon* for Interstate Cotton Seed Crushers Association and Southern Cotton Oil Company; *H. G. Wilson* for American Cement Plaster Company; *J. W. Bingham* for Corn Products Refining Company and American Manufacturers Association of the Products of Corn; *C. S. Bather* for Rockford Manufacturers & Shippers Association, National Furniture Traffic Association, and National School Supply Association; *P. M. Hanson*, *R. W. Ropiequet*, and *W. C. Ropiequet* for East Side Manufacturers' Association, Greater Belleville Board of Trade, National Enameling & Stamping Company, Laclede Steel Company, American Car & Foundry Company, Geo. S. Mephram & Company, Temtor Corn & Fruit Products Company, St. Louis Coke & Chemical Company, Barber Asphalt Paving Company, and Golden Grain Company; *John S. Burchmore* and *Luther M. Walter* for Penick & Ford, Ltd, Inc.; *John S. Burchmore* for Sinclair Refining Company, Mexican Petroleum Company, and New Orleans Refining Company; *J. R. Allen* for Philip Carey Manufacturing Company, Richardson Company, and Chatfield Manufacturing Company; *E. J. Bachman* and *A. W. McLaren* for Morris & Company; *Walter E. McCornack* for Interior Iowa Packers; *H. W. Davis* for John Morrell & Company; *E. T. Hitchcock* for T. M. Sinclair & Co., Ltd.; *C. A. Heath* for Rath Packing Company; *Walter E. McCornack*, *C. G. Creighton*, and *H. H. Bieze* for Bedford Stone Club; *R. D. Rynder* for Swift & Company; *Paul E. Blanchard* for Armour & Company; *B. F. Martin* for Natchez Chamber of Commerce, Yazoo City Commercial Club, Greenville Chamber of Commerce, Greenwood Chamber of Commerce, and Clarksdale Chamber of Commerce; *A. J. Whitman* for American Agricultural Chemical Company; *J. B. Hayes* for Illinois Glass Company, American Bottle Company, and Root Glass Company; *H. G. Huhn* for Owens Bottle Company; *John R. Gray* for Diamond Match Company; *J. H. Townshend*, *C. A. New*, and *Walter Williams* for Southern Hardwood Traffic Association and Chicago Mill & Lumber Company; *C. E. Fogle* for Heppes Roofing Company; *W. M. Powers* for Indianahoma Refining Company; *O. Van Brunt* for Certain-teed Products Corporation; *Edward A. Munson* for American Tar Products Company, Inc.; *Charles Van Overbeke* and *A. M. Stephens* for Standard Oil Company; *Clifford Thorne* and *T. M. Hanrahan* for Western Petroleum Refiners' Association and American Independent Petroleum Association; *C. R. Hillyer* and *J. E. Bryan* for Wisconsin Traffic Association; *J. F. Harris* for Temtor Corn & Fruit Products Company; *F. M. Elkinton* and *F. H. Cogswell* for Menasha Woodenware Company, John Strange Pail Company, Winnebago Cheese Company, G. B. Lewis Company, Waite Grass Carpet Company,

Deltex Grass Rug Company, Willow Rug Company, Fred C. Mansfield Company, and Paramount Knitting Company; *W. D. Lindsay* for United States Gypsum Company; *W. J. C. Kenyon* for St. Joseph Grain Exchange and Commerce Club; *George E. Breault* for Larrowe Milling Company; *G. E. Flanders* for Kansas City Bolt & Nut Company and Sheffield Steel Mills; *A. J. Cheeseman* for Des Moines Board of Trade; *Ray Williams* for Cairo Board of Trade and Cairo Association of Commerce; *Frank H. Andrews* for Board of Trade of Vicksburg; *W. O. Bartholomew* for Southern Illinois Millers Association; *J. J. Nevener* for Golden Grain Milling Company; *L. E. Banta* for Indianapolis Board of Trade; *T. J. McLaughlin* for Charles Boldt Glass Company; *J. J. Killiam* for Clinton Corn Syrup Refining Company; *W. J. Hanning* for Rapier Sugar Feed Company; *Charles D. Miller* for American Maize-Products Company; *Thomas L. Wolf* for A. E. Staley Manufacturing Company; *C. A. Brantley*, *C. O. Dawson*, and *E. S. DePass* for Carnation Milk Products Company, Libby, McNeill & Libby, National Cannery Association, Sprague, Warner & Company, Wholesale Grocers Exchange of Chicago, and Wisconsin Pea Cannery Association; *H. J. Hausner* for Valier & Spies Milling Company; *Sam Frier* for Wholesale Sash & Door Association; *Charles Rippin* for St. Louis Merchants Exchange; *J. A. Kuhn* for Omaha Grain Exchange; *George B. Webster* and *C. G. Hirt* for Associated Cooperage Industries of America; *William E. Rosenbaum* for Provident Chemical Works; Cotto-Waxo Company, and Anheuser-Busch Sales Corporation; *A. D. Seelig* for American Car & Foundry Company; *W. G. Strohm* for St. Louis Coke & Chemical Company; *H. B. McNeely* for Indianapolis Chamber of Commerce; *W. C. Mitchell* for Central Leather Company, United States Leather Company, R. Allen Sons Company, and Traffic Committee of the Tanners' Council; *C. H. Rodehaver* for Christopher & Simpson Iron Works Company, St. Louis Structural Steel Company, and National Basket & Fruit Package Manufacturers' Association; *L. M. Wallace* for A. P. Green Fire Brick Company and Refractories Traffic Association of St. Louis District; *C. E. Childe* for Omaha Chamber of Commerce, Traffic Bureau; *W. R. Scott*, *W. I. Sterling*, *C. V. Topping*, and *E. H. Hogueland* for Board of Trade of Kansas City, Kansas City Millers' Club, and Southwestern Millers' League; *Clark L. Dickson* for Sun Company; *M. M. Caskie* for Montgomery Chamber of Commerce; *H. Ignatius* for American Cotton Oil Company, Colgate & Company, N. K. Fairbank Company, Globe Soap Company, Gulf & Valley Cotton Oil Company, Ltd., James S. Kirk & Company; Louisville Food Products Company, Phoenix Cotton Oil Company, Procter & Gamble Company, Southern Cotton Oil Company, and Southport Mill, Ltd.; *B. R. Shepherd* for Chattanooga Sewer Pipe Works, South-

ern Sewer Pipe Works, Macon Sewer Pipe Works, Standard Sewer Pipe Works, and Columbia Sewer Pipe Company; *Fayette B. Dow* and *Willis Crane* for Joint Council of International Apple Shippers' Association, National League of Commission Merchants of the United States, and Western Fruit Jobbers Association of America; *John S. Burchmore*, *Luther M. Walter*, and *Wm. W. Collin, jr.* for G. H. Mead Company, Lake Superior Paper Company, Ltd., Spanish River Pulp & Paper Company and Abitibi Pulp & Paper Company, Ltd.; *Francis B. James*, *Gallagher*, *Kohlsaat & Rinaker*, *Earl B. Wilkinson*, and *Ewing H. Scott* for National Paving Brick Manufacturers' Association, American Face Brick Association, and Hollow Building Tile Association; *C. M. Updegraff* and *R. L. Ellis* for Jacob E. Decker & Sons; *R. L. Ellis* for Pueblo Commercial Club; *R. W. Ropiequet* for Certain-teed Products Corporation, Barrett Company, Ford Roofing Products Company, Richardson Company, American Tar Products Company, Flintkote Company, R. M. Reynolds Shingle Company, Sall Mountain Company, Standard Paint Company, Chatfield Manufacturing Company, Keystone Roofing Company, H. F. Watson Company, Wilberite Company, Schram Glass Manufacturing Company, and Hazel-Atlas Glass Company; *C. O. Cornwell* for Cudahy Packing Company; *E. M. Haynes* for Mengel Company; *Russel J. Miedel* for Wheeling Chamber of Commerce and Hazel-Atlas Glass Company; *George M. Foote* for Service Club of Gulfport; *Luther R. Martin* for Oliver Chilled Plow Works; *Roy W. Campbell* for Butler Paper Corporation; *E. H. Smith* for Newport Rolling Mill Company; *C. H. Tiffany* for New England Paper & Pulp Traffic Association; *W. H. Miller* for Indian Refining Company; *T. A. Bosley* for Virginia-Carolina Chemical Company; *A. J. Young* for International Agricultural Corporation; *F. E. Potts* for Lake Charles Association of Commerce; *C. A. Talley* for New Orleans Refining Company, Inc., Standard Oil Company of Louisiana, and Sinclair Refining Company of Louisiana; *J. W. Reading* for Layne & Bowler Company; *H. W. Young* for Pittsburgh Plate Glass Company; *C. O. Dawson* for Chicago Wholesale Grocers Exchange and Sprague, Warner & Company; *R. E. Clapp* for Solvay Process Company; *J. B. McLemore* for Southeastern Millers Association; *A. U. Tadlock* for Jonesboro Freight Bureau; *J. L. Roberts* for Barrett Company; *F. J. Danner* for National Implement & Vehicle Association and Moline Plow Company; *Sylvester R. Rush* for International Harvester Company; *J. H. Hoffman* for American Manufacturing Company; *H. G. Armantrout* for E. C. Atkins & Company; *L. J. Armstrong* for Parke, Davis & Company; *W. J. Buchanan* for Frederick Stearns & Company; *R. J. Mansfield* for Republic Creosoting Company; *A. B. Caswell* for Pfister & Vogel Leather Company; *G. S.*

Thacker for Continental Can Company; *W. H. Cloud* for Southern Association of Stove Manufacturers; *E. C. Winter* for Simonds Manufacturing Company; *H. G. Wilson* for American Cement Plaster Company; *R. D. Waller* for Farley & Loetscher Manufacturing Company; *J. A. Hanson* for Alfocorn Milling Company; and *R. M. Rogers* for Morton Salt Company.

REPORT OF THE COMMISSION.

DANIELS, *Commissioner*:

By schedules filed to become effective on March 1, 1921, and later dates, respondents proposed certain changes in the commodity rates, both increases and reductions, applicable, generally speaking, to, from, and between points south of the Ohio River, including the Mississippi Valley; also in the class rates from eastern and Virginia cities and Carolina territory to Mississippi Valley territory, and designated points east of Mississippi Valley territory, and in the class rates in the opposite direction, from New Orleans, La., Memphis, Tenn., and other points in Mississippi Valley territory to eastern and Virginia cities. Numerous protests having been filed by shippers and commercial organizations throughout the country, the schedules were suspended until July 28, 1921, and later dates and the effective dates were voluntarily deferred by the respondents until November 28, 1921. Rates and differentials are stated herein in amounts per 100 pounds.

The schedules, for the most part, purport to be filed in compliance with our orders in *Memphis-Southwestern Investigation*, 55 I. C. C., 515, hereinafter referred to as the *Memphis Case*; *Murfreesboro Board of Trade v. L. & N. R. R. Co.*, 55 I. C. C., 648, hereinafter referred to as the *Murfreesboro Case*; and in accordance with our decision in *Meridian Traffic Bureau v. Director General*, 57 I. C. C., 107, hereinafter referred to as the *Meridian Case*. Fourth section order No. 7542, entered in the *Memphis Case*, denied applications of the interested carriers to continue class and commodity rates from St. Louis, Mo., to Memphis, from St. Louis, Memphis, and designated Missouri River points to New Orleans, and from New Orleans to Memphis, the denial including points taking the same rates, where these rates were lower than rates from, to, or between intermediate points. Such lower rates had been maintained for many years at the water competitive points on the ground that competition with boat lines operating on the Mississippi, Missouri, Ohio, and Cumberland rivers had materially affected, or indeed controlled, the rail rates to such points. The class rates there considered have been revised and are not here in issue. Fourth section order No. 7566, entered in the *Murfreesboro Case*, denied the carriers' application for authority to continue lower

rates from various points of origin to Nashville, Tenn., than to intermediate points. These lower rates had also been long continued on the ground of water competition on the Cumberland River. The class rates considered in that case have likewise been revised to conform to the provisions of the fourth section, in accordance with our decision in *Rates to and from Nashville*, 61 I. C. C., 308, hereinafter called the *Nashville Case*, and are not involved in this proceeding. We found in the *Meridian Case* that the class and commodity rates from Mississippi and Ohio river crossings, Chicago, Ill., and related points to Meridian and Jackson, Miss., which were higher than rates to Mobile, Ala., other Gulf ports, and Mississippi River points, subjected Meridian and Jackson to undue prejudice and disadvantage and unduly preferred the water points.

The rates to the Gulf ports and Mississippi River points are, for obvious reasons, so closely related and interdependent, one upon the other, that it is impracticable to revise rates to the Mississippi River points as required in the *Memphis Case* without at the same time revising rates to the Gulf ports and the other points similarly situated and related thereto. No order was, therefore, issued in the *Meridian Case*. The class rates in issue in that case have also been made to conform to the fourth section.

Throughout the history of railroads reaching the water points the rates at the Mississippi, Missouri, Ohio, and Cumberland rivers and Gulf points have been more or less depressed due to water competition and lower than the rates at intermediate points. In the three cases first above mentioned we found in effect that this long-continued practice was no longer justified on the ground of existing water competition, and issued appropriate fourth section orders in the first two cases, rescinding essentially the fourth section relief previously granted respecting both class and commodity rates. These orders did not prescribe the method that should be followed in eliminating the fourth section departures condemned, but simply required that the discriminations against the intermediate points should be removed by a strict compliance with the long-and-short-haul provision of the fourth section. In removing the discrimination against the intermediate points the carriers have materially advanced the rates to the water points; and they state that, as the existing water competition can no longer be considered, they have endeavored to construct the rates in the Mississippi Valley territory on a strictly "dry land" basis. It is claimed, therefore, that the general revision required by these orders necessarily included rates from and to practically all parts of the country to and from all the Mississippi River points and Gulf ports; Nashville; the Ohio River crossings, Cincinnati, Ohio, and west thereof; St. Louis and Chicago; various points north

of the Ohio River, which heretofore have been made with relation to the rates to and from St. Louis or the Ohio River crossings; and Kansas City, Mo., Omaha, Nebr., and other Missouri River points and points related thereto. The revision also involved the class rates between eastern points and Mississippi Valley points. The far-reaching and extensive character of such a revision can readily be understood.

The tariffs under suspension number over 900, and the changes proposed consist of both increases and reductions in rates; cancellation of joint rates; and changes in and harmonizing of commodity descriptions, carload ratings, and minimum carload weights between Mississippi Valley, southwestern, and southeastern territories. They are so comprehensive and complex and cover such a vast territory that discussion thereof will necessarily be limited and confined to the more important and representative points of origin and destination and the principal features involved. While the principal territories concerned are the Mississippi Valley, southwestern, and southeastern territories, other territories are indirectly affected by the adjustment.

The Mississippi Valley territory to which our order No. 7542 was specifically directed is described as a narrow wedge with a maximum width of about 150 miles at its southern base, lying between the Arkansas-Louisiana territory, commonly known as southwestern territory, on the west, and the southeastern territory on the east. The Mississippi River from Cairo, Ill., to New Orleans forms its western boundary. The Gulf of Mexico from the mouth of the Mississippi River to Mobile forms the southern boundary, while the eastern and northern boundaries are formed by the line of the Mobile & Ohio from Mobile through Meridian, West Point, and Corinth, Miss., and Jackson, Tenn., to Humboldt, Tenn.; thence along the line of the Louisville & Nashville through McKenzie, Tenn., to Paris, Tenn.; thence along the line of the Nashville, Chattanooga & St. Louis to Paducah, Ky.; and thence along the Ohio River to Cairo.

The increases proposed are not intended, so it is averred, for the purpose of increasing the revenues of the carriers but simply to eliminate the fourth section departures ordered to be removed, and at the same time to standardize, at what is considered a reasonable level, rates which have long been on a depressed basis.

Monroe and Alexandria, La., appearing on behalf of respondents, urge that the proposed increased rates under suspension be allowed to become effective without delay. Their position is that the rates to these cities and other intermediate points in Arkansas and Louisiana immediately west of the Mississippi River should be on the same level as the Mississippi River points rates. Inasmuch as Monroe

and Alexandria are located on the west-side lines intermediate to the Mississippi River, it is urged that they bear the same relation in location to Vicksburg and Natchez, Miss., Baton Rouge, La., and New Orleans from a commercial standpoint as do Jackson, Meridian, Hattiesburg, Miss., and other points on the east side, and that the present adjustment of lower rates to the river points than to Monroe and Alexandria is discriminatory against the latter points.

The position of the east-side interior intermediate points is much the same as that of the west-side intermediate points. The brief filed on behalf of Meridian aptly states the position of the east-side intermediate points, as follows:

Protestants herein did not join in request for suspension of the schedules here in issue for the reason that the proposed rates, while not acceptable in all respects, would have resulted in an adjustment of rates in conformity with the fourth section of the Act and would have removed the discriminations against Meridian in issue in the *Meridian Case*. Our objection to the proposed rates is, therefore, directed against patent inconsistencies in the proposed commodity basis and to certain apparently unnecessary increases in rates to interior points, but does not comprehend a condemnation of the entire adjustment as proposed.

The suspended rates were the subject of numerous and vigorous protests from shipping interests throughout practically the entire United States. These protests are in the main based upon the ground that the increased rates to the river or low-rate points are excessive and not necessary in order to comply with our orders. Protestants say that only slight increases should have been made at the important water points, such as New Orleans and Memphis, and greater decreases made in rates to and from the intermediate points. They contend that such a revision would result in the same amount of revenue as now accrues to the carriers under the present rates, inasmuch as the movement to the water points is far greater than to the interior points. Certain protests were directed against the increases in various specified commodity rates; others to the cancellation of joint commodity rates over certain routes; and certain others to the establishment of new rates to intermediate points from certain shipping points without corresponding adjustments from other points. For the state of Mississippi it is urged that as it has 73.4 per cent of the total area, 59.7 per cent of the population, and 75.6 per cent of the total rail mileage involved in the valley, it will be called upon to bear the major portion of whatever increased transportation burdens may result from this readjustment, and that it is also vitally interested because of the effect that the readjustment must necessarily have upon Mississippi intrastate rates.

Our order in the *Memphis Case* did not extend to or directly cover class rates from eastern seaboard territory, Virginia cities, or Carolina territory to destinations in the Mississippi Valley or in the reverse direction. The carriers contend, however, that it was not possible to confine the revision of rates to points specifically covered by said order, as to do so would have created inconsistencies in rates involving new fourth section departures and maladjustments more aggravated than those which they attempted to correct; and that, therefore, in making the revision of rates required from St. Louis to Memphis, New Orleans, and other points in the Mississippi Valley territory, they undertook at the same time to revise the rates from Cincinnati, Cairo, Chicago, central territory, and points in Buffalo-Pittsburgh territory. This, it is said, necessitated also a revision in the rates from eastern and Virginia cities and from Carolina territory to points in the Mississippi Valley and in the reverse direction.

We recognized at the time of our decision in the *Memphis Case* that the revision required thereby could not be limited to the terms of our order entered therein. And in our last annual report to the Congress we pointed out the far-reaching results this decision would have, and that it would necessarily require a revision of rates throughout the Mississippi Valley, not only as to traffic between the points included in the order but also as to traffic between the Mississippi Valley and all points in the United States.

After the revision above referred to in the class rates from Ohio River crossings, Chicago, and points in central territory was completed, the carriers undertook to revise the tariffs carrying class rates between the east and the Mississippi Valley. These rates were thereafter suspended and, as stated, are included in this proceeding together with the suspended commodity rates.

The situation with respect to the class rates from eastern and Virginia cities and Carolina territory to points in the Mississippi Valley and to points east of the Mississippi Valley territory, and with respect to the class rates from certain Mississippi Valley points to eastern destinations, was recognized as being different from that obtaining with respect to most of the rates under investigation in this proceeding. This situation was specifically dealt with by respondents at the hearing and, for convenience, will be treated separately in this portion of the report, designated Part I. The commodity rate adjustment will be reserved for subsequent consideration in Part II of this report, to be published later.

CLASS RATES FROM EASTERN AND VIRGINIA CITIES AND CAROLINA TERRITORY TO MISSISSIPPI VALLEY TERRITORY.

At the hearing respondents proposed class rates from eastern and Virginia cities and from Carolina territory to points in the Mississippi Valley lower than the rates carried in the tariffs under suspension. These lower rates were proposed for the reason that at the time the schedules now under suspension were filed the carriers had proposed to make effective a first-class rate of \$2.16 between Cincinnati and New Orleans and other Gulf ports. Previously they had filed with us tariffs covering a scale of class rates beginning with \$2.15, first class, from south Atlantic ports to Cincinnati, and a scale beginning with \$2.08, first class, from south Atlantic ports to Memphis. As the class rates from Virginia cities to Memphis were regarded as the basic or pivotal rates in the adjustment from the east under consideration, the rates from Virginia cities to Memphis were made in line with the rates which they had first proposed to make effective between Cincinnati and Gulf ports and with the scale from south Atlantic ports to Ohio River crossings and Memphis, which had previously been filed with us. Hence their proposed scale beginning with \$2.19, first class, from Virginia cities to Memphis, which is the basic scale under suspension in this proceeding.

The rates from the south Atlantic ports were considered in the *Nashville Case*, decided during the progress of the hearing in the instant proceeding. After the filing of the schedules carrying the rates from the east the carriers decided to make the rates between Cincinnati and the Gulf ports and between the Ohio River crossings and south Atlantic ports \$2.08, first class, and other classes on basis of their percentage relationship. Accordingly, in view of the changes thus proposed in the rates between Cincinnati and the Gulf ports, and between Ohio River crossings and south Atlantic ports, and in view of our decision in the *Nashville Case*, it was concluded to modify the rates under suspension from the eastern cities and from Carolina territory to Memphis and points in Mississippi Valley territory, and the basic rate now proposed from Virginia cities to Memphis, for example, is \$2.10, first class, instead of \$2.19 as originally proposed. Similar departures from the suspended schedules are proposed with respect to the rates to points just east of the Mississippi Valley, and with respect to the eastbound rates from New Orleans, Memphis, and other representative Mississippi Valley points. We will hereinafter refer to the rates now in effect as the present rates, to the rates under suspension as suspended rates, and to the rates proposed by respondents at the hearing as proposed rates.

Under the proposed adjustment the destination territory has been divided into three major groups; (1) the Memphis-Columbus-Meridian group; (2) the Winona-Jackson-Hattiesburg group; and (3) the Mississippi River-Gulf ports group, as follows:

Memphis-Columbus-Meridian Group.

This group comprises the following junction points:

Memphis, Tenn.	Grand Junction, Tenn.
Middleton, Tenn.	Corinth, Miss.
Holly Springs, Miss.	New Albany, Miss.
Tupelo, Miss.	Columbus, Miss.
West Point, Miss.	Aberdeen, Miss.
Houston, Miss.	Meridian, Miss.
Starkville, Miss.	

The local territory is described as follows:

Southern Railway, Memphis division: all points west of Sheffield, Ala.

St. Louis-San Francisco Railway: all points between Memphis, Tenn., and Aberdeen Junction, Miss., including stations on the Aberdeen branch.

Columbus & Greenville Railroad: all points between Columbus and West Point, Miss.

Mobile & Ohio Railroad: all points between Corinth and West Point, Miss., including stations on the Aberdeen, Starkville, and Okolona branches and stations in the Montgomery district between Columbus and Artesia, Miss.

Gulf, Mobile & Northern Railroad: all points between Jackson, Tenn., and Houston, Miss.

Illinois Central Railroad: all stations between Memphis and Batesville, Miss., latter inclusive, and all points between Grand Junction, Tenn., and Holly Springs, Miss.

Winona-Jackson-Hattiesburg group.

This group comprises the following junction points:

Winona, Miss.	Maben, Miss.
Mathiston, Miss.	Jackson, Miss.
Ackerman, Miss.	Hattiesburg, Miss.
Newton, Miss.	Ellisville, Miss.
Laurel, Miss.	

The local territory is described as follows:

Mobile & Ohio Railroad: all points between West Point and Meridian, Miss., and all points between Meridian and Alabama-Mississippi state line.

New Orleans & Northeastern Railroad: all stations between Meridian and Hattiesburg, Miss.

Gulf, Mobile & Northern Railroad: all stations between Houston and Laurel, Miss.

Alabama & Vicksburg Railway: all points between Jackson and Meridian, Miss.

Columbus & Greenville Railroad: all points between West Point and Winona, Miss.

Illinois Central Railroad: all points between Holly Springs and Memphis Junction, Miss.; all points between Batesville and Winona, Miss.; all points between Winona and Jackson, Miss.; all points between Aberdeen Junction and Aberdeen, Miss.

Mississippi River-Gulf Ports Group.

This group comprises the following junction points:

Helena, Ark.	Greenville, Miss.
Greenwood, Miss.	Vicksburg, Miss.
Natchez, Miss.	Brookhaven, Miss.
Baton Rouge, La.	Gulfport, Miss.
New Orleans, La.	Mobile, Ala.
Pensacola, Fla.	

The local territory is described as follows:

New Orleans & Northeastern Railroad: all points between Hattiesburg, Miss., and New Orleans, La.

Mobile & Ohio Railroad: all points between Alabama-Mississippi state line and Mobile, Ala.

Gulf, Mobile & Northern Railroad: all points between Laurel, Miss., and Mobile, Ala., including stations on the Hattiesburg and Blodgett branches.

Illinois Central and Yazoo & Mississippi Valley railroads: all points on the main lines between Memphis, Tenn., and New Orleans, La., not included in the two groups above described.

Alabama & Vicksburg Railway: all points between Jackson and Vicksburg, Miss.

Louisville & Nashville Railroad: all points between New Orleans, La. and Mobile, Ala.

The rates to local points have been made in line with the rates to common or junction points. For example, rates to local stations on the Mobile & Ohio between Corinth and Tupelo are made the same as the rates to Tupelo; to points between Tupelo and West Point the same as the rates to West Point, and between West Point and Meridian, the same as to stations between Meridian and the Mississippi-Alabama state line. The same method has been followed with respect to all local points on the trunk lines.

PRESENT, SUSPENDED, AND PROPOSED RATES FROM VIRGINIA CITIES.

The present, suspended, and proposed first-class rates from Virginia cities to representative common points in each of the three major groups in the Mississippi Valley together with the average short-line distances as shown by respondents appear in the following table:

64 I. C. C.

Destination.	Average distance. ¹	Rates.		
		Present.	Sus-pended.	Proposed.
<i>Memphis-Columbus-Meridian group.</i>				
	<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Memphis, Tenn.....	828	158	219	210
Grand Junction, Tenn.....	779			
Middleton, Tenn.....	759			
Corinth, Miss.....	735			
Holly Springs, Miss.....	802			
New Albany, Miss.....	800			
Tupelo, Miss.....	783	212. 5	219	210
Columbus, Miss.....	774			
Aberdeen, Miss.....	787			
West Point, Miss.....	792			
Houston, Miss.....	822			
Starkville, Miss.....	799			
Meridian, Miss.....	804	199	219	210
<i>Winona-Jackson-Hattiesburg group.</i>				
Winona, Miss.....	858	212. 5	229	220
Maben, Miss.....	817			
Mathiston, Miss.....	820			
Ackerman, Miss.....	829	265. 5	229	220
Jackson, Miss.....	900	212. 5	229	220
Newton, Miss.....	834			
Laurel, Miss.....	859	199	229	220
Ellisville, Miss.....	868			
Hattiesburg, Miss.....	888			
<i>Mississippi River-Gulf ports group.</i>				
Baton Rouge, La.....	1,047	180	237	228
Natchez, Miss.....	998			
Vicksburg, Miss.....	944			
Greenville, Miss.....	942			
Helena, Ark.....	894	212. 5	237	228
Greenwood, Miss.....	887			
Brookhaven, Miss.....	954			
New Orleans, La.....	992			
Gulfport, Miss.....	940	156. 5	237	228
Mobile, Ala.....	868			
Pensacola, Fla.....				

¹ The average distances shown are the averages of short-line distances from Norfolk, Richmond, Roanoke, and Lynchburg to the respective destinations.

RATES TO MEMPHIS, COLUMBUS, AND MERIDIAN.

Under the grouping of destination territory from the east to Mississippi Valley territory, Memphis was used as the key or pivotal point. Memphis was similarly used in the readjustment from the west. Having determined upon the rates to Memphis, the carriers applied the same rates to Columbus and Meridian, as the distances from the east to Memphis, Columbus, and Meridian are substantially the same. It was explained that from the Ohio River and the west the revised rates to Columbus are higher than the rates to Memphis, and the rates to Meridian are higher than the rates to Columbus. Therefore, in the readjustment of rates without regard to water-competitive influences, it was considered that distances should be given greater recognition than was formerly the case, and it was therefore deemed proper to apply the same rates to Memphis, Columbus, and Meridian, and to group with these points Grand

Junction, Corinth, Holly Springs, New Albany, Tupelo, Aberdeen, Houston, West Point, and Starkville.

In *Fourth Section Violations in the Southeast*, 30 I. C. C., 153, we recognized that the class rates to Memphis were on a depressed basis due to water competition, and, by fourth section order No. 3866 entered therein, authorized the carriers to continue to charge lower rates to Memphis than to intermediate points. Subsequently, as a part of the general revision made in compliance with that order, slight increases were made in rates to Memphis, effective January 1, 1916. The present rates to that point are those then published and since increased under general order No. 28 of the Director General of Railroads and the general increases of 1920. The rates made effective January 1, 1916, were not considered maximum reasonable rates, but on the contrary they were, on a basis of distance, unduly low to Memphis. The rates were and are now lower than to intermediate and adjacent territory. The following statement of first-class rates shows the situation as it exists to-day:

To—	From Virginia cities.	From New York, N. Y.
	<i>Cents.</i>	<i>Cents.</i>
Memphis, Tenn.....	158	182
Corinth, Miss.....	212.5	238.5
Tupelo, Miss.....	212.5	238.5
Columbus, Miss.....	212.5	238.5
Decatur, Ala.....	178	210
Birmingham, Ala.....	167.5	218.5
Chattanooga, Tenn.....	156.5	210
Atlanta, Ga.....	156.5	210
Knoxville, Tenn.....	145.5	198.5

From the above table it will be seen that Memphis enjoys subnormal rates as compared with other points intermediate thereto. The distances to all of these intermediate points are materially less than to Memphis.

Equal first-class rates apply to Corinth, Columbus, Winona, Jackson, Greenwood, and Brookhaven, although the distances from Virginia cities range from 735 miles at Corinth to 954 miles at Brookhaven. The first-class rates to Meridian and Hattiesburg are less than to Corinth and Columbus, notwithstanding the distances to Meridian are somewhat greater and the distances to Hattiesburg are materially greater than the distances to Corinth and Columbus. The respondents contend that in revising these rates on a "dry land" basis the present grouping of destination territory had to be materially changed in order to effect a harmonious adjustment and to give to each community the approximate benefit of its location.

The following table shows a comparison of present, suspended, and proposed first-class rates from Virginia cities to Memphis, 64 I. C. C.

with the present, suspended, and proposed rates to important intermediate points, and indicates that the proposed first-class rate of \$2.10 to Memphis is slightly lower than the present rates to such intermediate points:

Destination.	Average distance.	Rates.		
		Present.	Suspended.	Proposed.
	Miles.	Cents.	Cents.	Cents.
Memphis, Tenn.....	828	158	219	210
Grand Junction, Tenn.....	779	212.5	219	210
Middleton, Tenn.....	759	212.5	219	210
Corinth, Miss.....	735	212.5	219	210
Holly Springs, Miss.....	802	212.5	219	210
New Albany, Miss.....	800	212.5	219	210
Tupelo, Miss.....	783	212.5	219	210

As indicating the reasonableness of the proposed rates, respondents compare the rates now proposed from Virginia cities to Memphis with first-class rates approved by us in the *Nashville Case* from south Atlantic ports to Memphis, as follows:

From—	Haul.	Rate.	From—	Haul.	Rate.
	Miles.	Cents.		Miles.	Cents.
Charleston, S. C.....	726	198	Norfolk, Va.....	963	210
Savannah, Ga.....	683	198	Richmond, Va.....	883	210
Brunswick, Ga.....	677	198	Lynchburg, Va.....	759	210
Jacksonville, Fla.....	695	198	Roanoke, Va.....	706	210
Average.....	695	.....	Average.....	828	.....

It is shown that the average distance from Virginia cities is 19 per cent greater than the average distance from south Atlantic ports, while the proposed rate from Virginia cities is but 6 per cent higher than the rate from south Atlantic ports to Memphis; that the average distance from Virginia cities to Memphis is 133 miles greater than the average distance from south Atlantic ports and for this difference in distance the proposed first-class rate from Virginia cities is but 12 cents higher than the rate from south Atlantic ports approved by us. In that case, we also prescribed a first-class rate of \$2.08 from south Atlantic ports to Ohio River crossings, which is 10 cents higher than the first-class rate prescribed to Memphis. The distances from south Atlantic ports to Ohio River crossings and to Memphis are as follows:

From—	To Cincinnati.	To Louisville.	To Evansville.	To Cairo.	Average from four points.	To Memphis.
	Miles.	Miles.	Miles.	Miles.	Miles.	Miles.
Charleston, S. C.....	703	688	754	796	735	726
Savannah, Ga.....	726	711	724	750	728	683
Brunswick, Ga.....	750	728	721	757	739	677
Jacksonville, Fla.....	806	784	777	774	785	695
Average.....	746	728	744	769	746	695

In connection with these comparisons of rates from south Atlantic ports to Memphis and Ohio River crossings, it should be observed that much of the traffic from Virginia and eastern cities to Memphis moves for three-fourths of the distance through eastern trunk line and central territories where the general level of rates is much lower than in the southeast.

The effect of the proposed grouping of Columbus with Memphis is to slightly reduce all of the present class rates to Columbus, except sixth class which is increased 1.5 cents. The present first-class rate from Chicago to Columbus is \$1.96 for a distance of 641 miles while from Virginia cities to Columbus the proposed first-class rate is \$2.10 for an average distance of 774 miles. In other words, the proposed rate from Virginia cities is 14 cents higher than the present rate from Chicago, which difference it is claimed is relatively small considering the difference in distance of 133 miles in favor of Chicago.

The rates to Meridian were originally established to meet competition of the Mallory line through Mobile and the Morgan line through New Orleans. These rates were considered in *Fourth Section Violations in the Southeast, supra*, and the carriers were there authorized to charge lower rates to Meridian than to intermediate points except over the water-and-rail routes through Gulf ports, the rate-making routes. Relief under the fourth section was denied to carriers operating water-and-rail routes through the Gulf ports to Memphis, and the increase made in the Memphis rate effective January, 1916, it is claimed, was primarily for the purpose of removing such fourth section departures over those routes and minimizing the reductions at intermediate points on the Mobile & Ohio and the New Orleans & Northeastern operating from Mobile and New Orleans via Meridian. The present rates from the east to Meridian are lower than the rates to intermediate stations on the Alabama Great Southern and the Southern. Respondents offer comparisons to show that the present rates to Meridian are subnormal as compared with the rates to intermediate points such as Akron, York, Tuscaloosa, Ala., and interior points such as Columbus, West Point, Tupelo, and Corinth. Comparisons are also made of the present rates to Meridian with rates to intermediate and local as well as junction points on the Alabama Great Southern south of Birmingham, Ala., and with the rates now in effect from Chicago to Meridian, which latter rates were established in compliance with our decision in the *Memphis Case*. As stated, it is now proposed to make the rates to Meridian the same as rates to Memphis and Columbus. The average distance from Virginia cities to Meridian is 804, as compared with the average distances of 828 miles to Memphis and 774 miles to Columbus.

As indicating that the proposed rates from Virginia cities to Memphis, Columbus, and Meridian are reasonably low, respondents present many comparisons, which are illustrated by the following table of present first-class rates from Chicago, Indianapolis, Ind., and Milwaukee, Wis., to important points in the Mississippi Valley compared with the proposed rates from the Virginia cities:

	Distance.	Proposed rate.	Present rate.
	Miles.	Cents.	Cents.
From Virginia cities to—			
Memphis, Tenn.....	¹ 828	210	.....
Columbus, Miss.....	¹ 773	210	.....
Meridian, Miss.....	¹ 804	210	.....
From Milwaukee, Wis., to—			
Meridian, Miss.....	805	.....	217. 5
Vicksburg, Miss.....	832	.....	217. 5
Jackson, Miss.....	812	.....	217. 5
Laurel, Miss.....	850	.....	228
Hattiesburg, Miss.....	879	.....	228
From Chicago, Ill., to—			
Natchez, Miss.....	824	.....	218
Laurel, Miss.....	765	.....	218
Hattiesburg, Miss.....	794	.....	218
Brookhaven, Miss.....	781	.....	218
New Orleans, La.....	911	.....	226. 5
Gulfport, Miss.....	887	.....	226. 5
Mobile, Ala.....	855	.....	226. 5
From Indianapolis, Ind., to—			
New Orleans, La.....	888	.....	226. 5
Hattiesburg, Miss.....	744	.....	218
Brookhaven, Miss.....	731	.....	218

¹ Average of the distances from Norfolk, Richmond, Lynchburg, and Roanoke.

It is also urged that the proposed rates from Virginia cities to Memphis, Columbus, and Meridian are considerably lower than the present level of rates from Pittsburgh, Pa., to important points in the Mississippi Valley and southeastern territory.

On behalf of the Memphis interests it is contended that the class rates to Memphis have heretofore been made by the trunk lines through the Ohio River crossings by routes over which most of the business moves through a territory of high traffic density, and not by the southern lines; that Memphis competes in Kentucky, Tennessee, Missouri, Arkansas, Louisiana, Mississippi, and Alabama with Ohio River points and with such points as St. Louis and Chicago, and not with Birmingham, Atlanta, Ga., Chattanooga, Tenn., etc., and that the present rates have been adjusted accordingly. They aver that now to change the basis of rates to Memphis would be revolutionary and destructive of large interests created and maintained under that system of rates. Their contention is that the rates from Virginia cities and the east to Memphis may not reasonably be made higher than rates to St. Louis and East St. Louis, Ill. This would require fourth section relief to the carriers which they are not here asking, or a reduction in rates to many intermediate points which the carriers

have attempted to maintain as reasonable. Practically the same contention was urged by the Nashville interests in the *Murfreesboro Case*, to the effect that we should consider the rates to Nashville in line with the rates to Paducah, a contention which we found to be without merit. Respondents assert that to apply the class scale north of the river to Memphis would have the effect of cutting the present intermediate rates back as far as Bristol, Tenn., thus involving a cut of 38 or 40 per cent in the entire class-rate structure in the southeast.

It is further represented on behalf of Memphis interests that the heavy advance in class rates which move carload and less-than-carload traffic will further increase their difficulties in the handling of such commodities as furniture, where commodity rates are in effect on the same articles from other territories to the southeast. We are asked to find reasonable rates to Memphis not higher than those in effect to St. Louis and East St. Louis, plus the old differentials with the increases under general order No. 28 and our general authorization of July 29, 1920. It was stated on behalf of respondents that in all such cases where there was a movement to or from the southeast or to or from the Mississippi Valley, where they had commodity rates to and from the southeast and no corresponding commodity rates to and from the Mississippi Valley, they would be willing to establish commodity rates to and from the Mississippi Valley in line with the commodity rates which are carried to and from the southeast. The short-line distance from the east to Memphis is over the route through the Virginia gateways, Bristol, and Chattanooga; and it is clear from the record that if rates were maintained to Memphis related to the rates to St. Louis without fourth section relief, marked reductions would have to be made in the rates to important intermediate points.

On behalf of Meridian it is contended that the proposed class rates are too high and that Meridian is entitled to lower rates because of its proximity to the Gulf ports and in consideration of the boat-line service to the Gulf ports.

In a revision of rates of the character here under consideration, manifestly the readjustment should not be made wholly or largely by increasing the rates to the more distant points to the level of rates to the intermediate points. It is conceded that the proposed readjustment is not for revenue purposes but is primarily for the purpose of correcting fourth section departures and removing undue preference in favor of Memphis and other low-rate points and undue prejudice to interior points. As the rates to Memphis have been taken as the basic rates in the proposed readjustment it first becomes necessary to determine how much the rates to Memphis may properly be increased and how much the rates to intermediate points should

be reduced in order to secure a consistent adjustment, giving due consideration to the probable effect of such a readjustment upon the aggregate revenue yielded under the present adjustment. The following table shows the average distances and the present first-class rates from Virginia cities to Memphis and to Knoxville, Tenn., and other points east of Memphis:

From Virginia cities to—	Average distance.	Rate.
	<i>Miles.</i>	<i>Cents.</i>
Knoxville.....	406	145.5
Chattanooga.....	517	156.5
Decatur.....	639	178
Nashville.....	669	178
Corinth.....	735	212.5
Grand Junction.....	776	212.5
Memphis.....	828	158

The basic rates to Knoxville and Chattanooga have been in force for many years without substantial change. The rate to Nashville has recently been approved by us in the *Nashville Case* and Decatur, Ala., takes the same rate for substantially the same distance, the distance to Nashville being 16 miles shorter than to Decatur over the direct route by way of the Tennessee Central and only 30 miles farther by way of Chattanooga and the Nashville, Chattanooga & St. Louis. Taking into consideration the proposed destination grouping, these comparisons do not, in our judgment, support a rate from Virginia cities to Memphis, 189 miles beyond Decatur, in excess of \$2.

The rate from Virginia cities to Atlanta for an average distance of approximately 550 miles is the same as the rate to Chattanooga, \$1.565, while the rate to Birmingham and Montgomery is \$1.675, representing a spread of only 11 cents for the additional haul of 143 miles, Chattanooga to Birmingham, and 167 miles, Atlanta to Birmingham. For the additional haul of 175 miles from Atlanta to Montgomery there is also a spread of 11 cents in the rate. To Meridian, however, 152 miles beyond Birmingham and 154 miles beyond Montgomery, there is an excess of 31.5 cents over the rates to the last-named points. Notwithstanding the fact that the spread in rates to Meridian over Birmingham and Montgomery appears to be excessive, it is now proposed to increase this spread by increasing the rate to Meridian 11 cents.

It should also be observed in connection with the comparisons made by respondents in justification of a rate of \$2.10, first class, that respondents propose to apply to the \$2.10 rate different and generally higher percentage relationships for the other classes than are used from the Ohio River and central territory to the Mississippi

Valley and which now apply in connection with the rates here under consideration. The percentages from central territory are lower on classes 2 to 6, inclusive, and higher on classes A to D, inclusive. However, the difference is slight on class D and movement on classes A and B is not extensive. It is apparent, therefore, that with a given rate, the same on first class, the aggregate of the revenue on all classes would be considerably higher under the proposed percentages from Virginia cities than under the present percentages from central territory and Virginia cities.

We are of opinion and find that under the proposed readjustment from Virginia cities to Memphis and to the other points in the proposed Memphis-Columbus-Meridian group, which grouping, with the exception noted below, is approved, respondents have not justified a first-class rate from Virginia cities to Memphis and grouped points in excess of \$2, which we find will be a maximum just and reasonable rate. The proposed grouping of the line of the Southern west of Sheffield, Ala., to Memphis for a distance of nearly 150 miles is too extensive, and we are of opinion and find that the first-class rate to points on this line west of Sheffield and east of Middleton, Tenn., should not exceed \$1.90 as a just and reasonable rate.

RATES TO HATTIESBURG, JACKSON, AND WINONA.

Hattiesburg is 85 miles south of Meridian on the New Orleans & Northeastern, Jackson is 96 miles west of Meridian on the Alabama & Vicksburg, and Winona is 85 miles west of Columbus on the Columbus & Greenville. It is proposed to make the rates to the Hattiesburg-Jackson-Winona group 10 cents, first class, over the rates to the Memphis-Columbus-Meridian group. The present rates from the east to Hattiesburg are the same as the rates to Meridian, and the present rates to Jackson and Winona are the same as the rates to Columbus, notwithstanding that Hattiesburg, Jackson, and Winona are substantially farther distant. Hattiesburg is used as the pivotal point in arriving at the proposed rates for this group. The proposed basis of making rates from Virginia cities to Hattiesburg on a differential scale beginning with 10 cents, first class, over Meridian is in harmony with the basis now in effect from Ohio River crossings, Chicago, and related points. These differentials are also supported by the differences now obtaining in the present adjustment of rates from Milwaukee over Chicago to points in the Mississippi Valley territory, Milwaukee being 85 miles north of Chicago and the differentials on first class being 10 cents.

The short-line distances from Virginia cities and the east to Jackson make through Meridian, and the short-line distances to Winona make through Columbus, so that the distances over Meridian and Columbus

represent the additional service performed in the handling of traffic to Jackson and Winona. Respondents contend that if the proposed basis for making rates to Hattiesburg is reasonable there would be no justification for making lower rates to Jackson and Winona than to Hattiesburg for substantially similar distances.

On the whole this grouping and the proposed relationship with the Memphis-Columbus-Meridian group do not appear to be unreasonable and are approved, subject to certain extensions of the grouping, hereinafter referred to in dealing with the rates to the proposed Mississippi River-Gulf ports group. On the basis approved herein this will result in a rate of \$2.10, first class, from Virginia cities to this group, instead of \$2.20 as proposed by the carriers and \$2.29 as shown in the suspended tariffs. We find that the proposed differential of 10 cents, first class, over the Memphis-Columbus-Meridian group will be just and reasonable.

RATES TO NEW ORLEANS, VICKSBURG, GREENVILLE, AND OTHER POINTS IN THE
MISSISSIPPI RIVER-GULF PORTS GROUP.

The present rates to Gulf ports (New Orleans, Mobile, Pensacola) and to Mississippi River crossings (Baton Rouge, Natchez, Vicksburg, Greenville, and Helena) were established to meet water competition and are, therefore, claimed to be subnormal. As the present rates to Mobile and Pensacola are the same as to New Orleans, the discussion of these rates will be confined to New Orleans as representative. The present rates to New Orleans are materially less than to intermediate points, as illustrated by the following table which compares the present all-rail rates from New York, Baltimore, Md., and Virginia cities to New Orleans, with the present all-rail rates to intermediate points:

To—	From New York.	From Baltimore.	From Vir- ginia cities.
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
New Orleans, La.	205. 5	192	156. 5
Hattiesburg, Miss.	223. 5	212	199
Meridian, Miss.	223. 5	212	199
York, Ala.	252	240	199
Tuscaloosa, Ala.	238. 5	226. 5	199
Birmingham, Ala.	218. 5	206. 5	167. 5
Atlanta, Ga.	210	198. 5	156. 5

Respondents show that the present rates to points on the Mississippi River, Baton Rouge to Helena, inclusive, are less than to important intermediate points, and in making these comparisons Vicksburg and Greenville are selected as representative river points:

To—	From New York.	From Baltimore.	From Virginia cities.
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Vicksburg, Miss.	203. 5	192	180
Jackson, Miss.	238. 5	226. 5	212. 5
Meridian, Miss.	223. 5	212	199
York, Ala.	252	240	199
Tuscaloosa, Ala.	238. 5	226. 5	199
Birmingham, Ala.	218. 5	206. 5	167. 5
Atlanta, Ga.	210	198. 5	156. 5
Greenville, Miss.	203. 5	192	180
Greenwood, Miss.	238. 5	226. 5	212. 5
Winona, Miss.	238. 5	226. 5	212. 5
Columbus, Miss.	238. 5	226. 5	212. 5
Birmingham, Ala.	218. 5	206. 5	167. 5
Atlanta, Ga.	210	198. 5	156. 5

The proposed rates to Greenville, Vicksburg, New Orleans, and other points included in the Mississippi River-Gulf ports group are somewhat higher than the proposed rates to Winona, Jackson, and Hattiesburg, the proposed differential being 8 cents, or 18 cents on first class higher than on rates to the points in the Memphis-Columbus-Meridian group. In other words, it is proposed that the rates to New Orleans and Vicksburg shall be made 18 cents higher, first class, than the rates to Meridian, and the rates to Greenville on a basis of 18 cents higher than the rates to Columbus, and the same rates to be applied to Mobile, Pensacola, Gulfport, Baton Rouge, Brookhaven, Natchez, Greenwood, and Helena. Under the present adjustment from Ohio River crossings, Chicago and related points, the rates to New Orleans and Mobile are approximately 18 cents higher than the rates to Meridian, and the proposed basis of making rates from Virginia cities to New Orleans and to the Gulf ports is in harmony with that basis.

New Orleans is 196 miles south of Meridian by the New Orleans & Northeastern; Mobile is 136 miles south of Meridian by the Mobile & Ohio; Vicksburg is 140 miles west of Meridian, on the Alabama & Vicksburg; and Greenville is 168 miles west of Columbus on the Columbus & Greenville. The distances from the east to Greenville and Vicksburg not being materially different from the average distances to New Orleans and Mobile, it is urged that the rates to Greenville should be as much higher than the rates to Columbus, and the rates to Vicksburg should be as much higher than the rates to Meridian as are the rates to New Orleans and Mobile higher than the rates to Meridian. In other words, under this proposed readjustment, the same total rates were made to Memphis, Columbus, and Meridian, after which the rates to Winona, Jackson, and Hattiesburg were made differentials of 10 cents higher than the rates to Memphis, Columbus, and Meridian, and finally the rates to New Orleans, Vicksburg, Greenville, and other points in the Mississippi River-Gulf ports group were

made on a basis of 8 cents higher than the rates to points in the Winona-Jackson-Hattiesburg group, all of which, it is maintained, is in accord with the practices followed in the construction of the rates already established and made effective from important western points.

We find that the differential of 18 cents, first class, over the Memphis-Columbus-Meridian group, proposed to be used in making the rates to this group will be just and reasonable. We are of opinion, however, that the grouping proposed is too extensive and embraces some points that properly should be included in the Winona-Jackson-Hattiesburg group. For example, this group includes Helena, 66 miles south of Memphis and 894 miles from Virginia cities, and Greenwood 887 miles from Virginia cities, to which points it is proposed to charge higher rates than to Hattiesburg 888 miles, and Jackson, 900 miles, from Virginia cities. While Helena is on the west bank of the Mississippi River that circumstance does not warrant the proposed spread of 18 cents over Memphis for a haul of only 66 miles. We are of opinion that the grouping should be modified, as indicated, by including in the Winona-Jackson-Hattiesburg group Helena and Greenwood as well as such other points as would logically fall within that group under such a revision.

RATES TO POINTS ON THE MISSISSIPPI CENTRAL, GULF & SHIP ISLAND, AND NEW ORLEANS GREAT NORTHERN RAILROADS.

The present rates from eastern and Virginia cities to points on the Mississippi Central, Gulf & Ship Island, and New Orleans Great Northern are made on combinations of the rates to junction points with the trunk lines, higher rates being maintained to intermediate points than to the junction points under the authority of fourth section order No. 7026 of November 3, 1917, which is still in effect. To points on the Mississippi Central, for example, which extends from Natchez in an easterly direction through Brookhaven to Hattiesburg, the rates to points in the vicinity of Natchez gradually grade up, beginning with the first station east of Natchez, until the combination over Brookhaven is reached. The rates then make over Brookhaven until the combination over Hattiesburg is reached, the rates then grading down to Hattiesburg.

The present rates to points on these lines should not be increased except for the purpose of removing or reducing fourth section departures, and where such increases are made for that purpose they should be graded in relation to the rates to the points to which no increases are authorized herein, but in no instance should any of said rates exceed the lowest combination.

DIFFERENTIAL RELATIONSHIP FROM BALTIMORE AND OTHER EASTERN CITIES.

It is contended on behalf of respondents that while water-competitive influences were disregarded in constructing the revised rates from Virginia cities, the effect of water competition upon the differential adjustment from the eastern port cities can not be disregarded, as that differential adjustment still reflects the influence of the all-water and water-and-rail rates from the different ports.

It is proposed to relate the rates from eastern ports with the rates from Virginia cities by the following differentials, first class: Baltimore, 14 cents over Virginia cities; Philadelphia, Pa., and New York, 11 cents over Baltimore, or 25 cents over Virginia cities; and Boston, 8 cents over New York, or 33 cents over Virginia cities.

The present differences in the first-class rates from Baltimore over Virginia cities to the Mississippi River cities are 10.5 cents to Memphis and 12 cents to Greenville, Vicksburg, Natchez, and Helena. To the interior the differences from Baltimore over Virginia cities range from 13 to 15 cents and to New Orleans and Gulf ports the all-rail differential is 45 cents. It is now proposed to make the rates from Baltimore uniformly 14 cents on first class higher than the rates from Virginia cities, which represents approximately the situation as it exists to-day to the major portion of Mississippi Valley territory. The Baltimore distances are greater than the average of the Virginia cities distances to the following extent: To Memphis 179 miles; Columbus 193 miles; Vicksburg and Meridian 186 miles; New Orleans 189 miles; and Mobile 174 miles.

A statement was filed by the Commercial Traffic Managers of Philadelphia on behalf of the shipping interests of Philadelphia and adjacent territory taking the Philadelphia rates, and a similar statement by the Philadelphia Chamber of Commerce protesting against the proposed differential relationship between the eastern port cities, particularly with respect to the application of the same rates from Philadelphia as from New York to the Mississippi Valley territory. For these protestants it is urged that for many years joint rates were maintained to Memphis, Nashville, Decatur, Meridian, Vicksburg, New Orleans, and certain other points known as Mississippi Valley prorating points, which were lower from Philadelphia and Baltimore rate points than from New York, to the extent of the differentials applying to central territory.

The proposed differential of 11 cents, Philadelphia and New York over Baltimore, is the minimum amount obtaining under the present adjustment of rates to practically the entire Mississippi Valley territory except Memphis, New Orleans, and Gulf ports, and is sub-

stantially the differential existing from both New York and Philadelphia under the present adjustment of rates to the southeast. The average distance from Philadelphia and New York over Baltimore is 141 miles. In the *Nashville Case* we approved an adjustment of class rates from eastern cities to Nashville under which the rates from Philadelphia are 11.5 cents, first class, higher than the rates from Baltimore, and the rates from New York are the same as from Philadelphia. Boston is 212 miles from New York and the differential Boston over New York established by the carriers as the result of our decision in the *Nashville Case* is 8.5 cents, which is also substantially the relationship existing to all points in southeastern and Mississippi Valley territories except to New Orleans and Gulf ports and to Memphis.

We see no reason why the proposed differentials should not be permitted to become effective as a part of the readjustment under consideration and we find that they have been justified.

RATES FROM CAROLINA TERRITORY TO MISSISSIPPI VALLEY TERRITORY.

Under the present adjustment, North Carolina points are grouped with Virginia cities and the same grouping is continued under the suspended schedules. Respondents contend that from the standpoint of distance there is no justification for making lower rates from Carolina territory than from the Virginia cities, and rely upon comparisons made in connection with the proposed rates from Virginia cities in justification of the proposed rates from North Carolina points.

In our recent decision in *Corporation Commission of N. C. v. Director General*, 62 I. C. C., 64, we fixed the maximum relationships of class rates from North Carolina points and the Virginia cities, i. e. Richmond and Norfolk, on traffic to this destination territory, with minimum spreads under the Virginia cities from North Carolina points, which decision governs the relationship between those points to be observed in the instant case.

RATES TO POINTS ON THE ALABAMA GREAT SOUTHERN RAILROAD AND THE SOUTHERN RAILWAY LOCATED IN SOUTHEASTERN TERRITORY AND UNDER SUSPENSION IN THESE PROCEEDINGS.

There are also under suspension in this proceeding class rates from eastern and Virginia cities to stations on the Alabama Great Southern between Birmingham and Meridian, and to stations on the Southern between Selma and York, Ala., between Marion Junction and Akron, Ala., and between Marion Junction and Mobile.

These destinations are all located in southeastern territory, and the revisions proposed in these rates are in line with the revisions proposed to points in the Mississippi Valley. The revision in the rates to York, for instance, is made necessary because those rates are to-day higher than the rates to Meridian.

The basis observed by the carriers to these stations in the schedules under suspension is as follows:

To Alabama Great Southern Railroad stations:

Between York, Ala., and Meridian,

Miss. Same as to Meridian, Miss.

York, Ala. Continue present rates, observing proposed rates to Meridian as maxima.

Between Birmingham, Ala. and

York, Ala. Continue present rates, observing proposed rates to Meridian as maxima.

To Southern Railway stations (Mobile division):

Between Kimbrough and Mobile, Ala. Same as to Mobile.

Between Marion Junction and Kim-

brough, Ala. Continue present rates, observing proposed rates to Mobile as maxima.

Between Selma and York, Ala. Continue present rates, observing proposed rates to Meridian as maxima.

Between Marion Junction and Ak-

ron, Ala. Continue present rates, observing proposed rates to Meridian as maxima.

We find that the general basis proposed has been justified.

EASTBOUND RATES.

Respondents state that in the limited time which they had they could not cover the entire adjustment from the Mississippi Valley territory to the east, and the revision was therefore limited to the rates from New Orleans, Memphis, and certain other pivotal points in the Mississippi Valley to eastern and Virginia cities; that the revision proposed in those rates is in line with the revision which they have proposed from the east, the rates being made the same in both directions. They aver that they intend to apply the same basis of rates eastbound as are approved westbound. The plan of equalizing rates is defensible, and we have often said that where the transportation conditions affecting the movement in opposite directions between the same points are substantially similar there should be no disparity in the rates. *West Virginia Rail Co. v. B. & O. R. R. Co.*, 50 I. C. C., 318.

PERCENTAGE RELATIONSHIPS.

Respondents propose in the instant class-rate adjustment the southern standard of percentage relationships of classes, the same as was proposed by the carriers and considered by us in the *Nash-*
64 I. C. C.

ville Case. In that case we prescribed a different percentage relationship to first class than that proposed, particularly on the lettered classes, which were made lower than the percentages under the southern standard scale. Respondents assert that there should not be any different class relationship from the east to the Mississippi Valley territory than to Nashville, and contend that if the class relationships which we prescribed to Nashville are to stand, the same class relationships should apply to the Mississippi Valley, but ask that we make slight modifications in this scale and adopt, on classes A and B the relationship which they have proposed in the southern standard scale, namely 35 and 40 per cent instead of 29 and 35 per cent on classes A and B, respectively, as prescribed by us in the *Nashville Case*. However, we see no reason in this case and upon this record for departing from the percentage relationships of first class there prescribed. We find that the lower classes of all of the revised rates should be constructed in conformity with the percentages of first class prescribed in that case, as follows:

Classes.....	1	2	3	4	5	6	A	B	C	D
Percentages.....	100	86	76	64	52	43	29	35	27	24

In computing and applying the rates prescribed herein fractions of less than 0.25 cent shall be omitted. Fractions of 0.25 cent or greater but less than 0.75 cent shall be stated as 0.5 cent. Fractions of 0.75 cent or greater shall be increased to the next whole cent.

The present first-class rate from New York to St. Louis is \$1.84. Applying the proposed differential on first class from New York over the \$2 rate approved from Virginia cities to Memphis will result in a rate of \$2.25 from New York to Memphis. The disparity on other classes will be relatively greater. Where a proportionately greater spread, Memphis over St. Louis, than herein found proper on first class will result because of the disparity in percentage relationship of the classes, and where reasonable necessity therefor exists carload commodity rates should be established from eastern territory and Virginia cities to the Memphis group in harmony with the rates from the same points to St. Louis, on the same commodities, whether the latter are commodity or class rates. Similar adjustments should be made to the other Mississippi Valley groups.

An appropriate order will be entered requiring the cancellation of the suspended class-rate schedules and the filing of new schedules establishing rates on the bases herein found just and reasonable. In constructing rates in conformity with the rate bases prescribed, respondents will be expected to modify the Mississippi Valley groupings and to make such other changes as are indicated in the report to be proper.

Our findings herein are without prejudice to any different conclusions which may be reached in other proceedings on a fuller record involving the rates to, from, or between the territory here considered.

CAMPBELL, *Commissioner*, dissenting in part:

The report finds a first-class rate of \$2 and rates based thereon to be reasonable. So far as first-class rates are concerned I concur in the conclusions. But I am unable to agree with the percentage relationships of 100, 86, 76, and 64 for the first four classes prescribed herein. In the *Consolidated Classification Case*, 54 I. C. C., 1, the Commission in considering classification uniformity recommended a relationship of 100, 85, 70, and 60 for the first four classes, and this, to my mind, should have been the relationship prescribed in the *Nashville Case*. Having failed in that case to take a forward step in the interest of uniformity, I am convinced that we should not miss the opportunity presented on this record. Time is now ripe for progress toward greater uniformity and consistency in rate making, and antiquated adjustments call for revision. "Methods of rate making based upon theories that are no longer tenable or upon conditions that no longer exist should be discarded." *Intermediate Rate Asso. v. Director General*, 61 I. C. C., 226.

I am authorized to state that COMMISSIONER COX concurs in these views.

64 I. C. C.

No. 11754.

ANACONDA COPPER MINING COMPANY

v.

DIRECTOR GENERAL, AS AGENT, BUFFALO, ROCHESTER & PITTSBURGH RAILWAY COMPANY, ET AL.

Submitted May 9, 1921. Decided September 28, 1921.

Rates on copper bars, in carloads, from Anaconda and Black Eagle, Mont., to Rome, N. Y., found not unreasonable, unjustly discriminatory, or unduly prejudicial. Complaint dismissed.

Warren Nichols for complainant.

John F. Finerty, T. M. Woodward, and F. G. Dorety for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation engaged in smelting and refining copper ore, by complaint filed August 26, 1920, alleges that the rates on shipments of copper bars in carloads made by complainant from Anaconda and Black Eagle, Mont., to Rome, N. Y., during the period from July, 1916, to August, 1920, were unreasonable, unjustly discriminatory, and unduly prejudicial, and in violation of the long-and-short-haul provision of the fourth section of the interstate commerce act. The prayer is for reparation only. Rates will be stated in amounts per net ton.

Anaconda is near Butte, Mont., where complainant's mines are located, and Black Eagle is about 200 miles northeast thereof. Anaconda is served only by the Butte, Anaconda & Pacific, which connects with the Northern Pacific, the Chicago, Milwaukee & St. Paul, and the Great Northern at Butte. The latter two roads serve Black Eagle. Rome is on the main line of the New York Central, 251 miles from New York, N. Y., and 14 miles west of Utica, N. Y.

Prior to June 25, 1918, the rate from Anaconda to Utica was \$9.75, 40 cents under the rate to New York. The contemporaneous rate to Rome was \$10.15, the same as to New York. On the above date, under the increases authorized by general order No. 28 of the Director

General of Railroads, these rates became \$16.10 and \$16.50, respectively. The rates from Black Eagle prior to June 25, 1918, were 35 cents under the rates from Anaconda, and since that date the same as from Anaconda. The maintenance of a lower rate to Utica than to Rome was not protected by an appropriate application and was unlawful. On August 21, 1920, this fourth section departure was corrected by a reduction of the Rome rate to the Utica basis, and this is the present adjustment.

Complainant rests its case on this fourth section departure; on the fact that defendants corrected the departure by a reduction in the Rome rate; and on the further fact, which it emphasizes, that during this period and at the present time class and commodity rates from Montana points to Rome have been and are generally on a lower level than to New York. It also directs attention to the rates on copper bars from the northern peninsula of Michigan, which were 50 cents lower to Rome and Utica than to New York prior to August 26, 1920, when the general increases authorized by us became effective, and are 70 cents lower at the present time; and to the rate on the same commodity from Omaha, Nebr., which, to the same destinations, was 60 cents under the New York rate prior to August 26, and 30 cents thereafter.

Prior to January 25, 1908, the only joint rates on copper bars from Montana points to the east were those to New York, Perth Amboy, N. J., Boston, Mass., Philadelphia, Pa., and Baltimore, Md., and were by general provision made applicable to intermediate points. On that date at the solicitation of copper interests joint rates were established to 114 destinations east of Chicago. These joint rates were arrived at by adding to the local rates to St. Paul, Minn., the proportional rates beyond. The question of the proper basis to points to which no proportional rates were in effect from St. Paul, Rome among the number, was then submitted to the eastern carriers, with the result that Rome was accorded the same rates as those in effect to New York. At about the time when these joint rates became effective the eastern lines expressed to their western connections dissatisfaction with the proportional rates which had been published shortly before to Utica, Schenectady, Albany, and Troy, N. Y., and thereafter these were revised to the same basis as that applied to New York. Revision was made in the joint rates to the other points named, based on the revised proportionals, but Utica was overlooked, probably, it is said, because no traffic moved to that destination. The reduction in the Rome rate to the Utica basis was made, defendants assert, without investigation or realization of the alleged error that had crept into the Utica rate.

In reply to complainant's statement that class and commodity rates generally from Montana points to Rome and Utica are on a lower

basis than to New York, defendants answer that the rates named in transcontinental freight bureau tariffs from Montana are blanketed over practically the entire state of New York, that these rates are in fact the Pacific coast-Spokane rates, and apply only as maxima from Montana, but that Montana properly belongs in that western territory. They admit that traffic from Montana is subject to the transcontinental rates as maxima only, and that perhaps the bulk of it moves under rates which are lower to interior New York points than to New York, but point out that these rates are combination rates based either on St. Paul, the Mississippi River, or Chicago, and that lower rates to interior New York points obtain because of the fact that this basis is reflected in the eastern factors covering traffic for much shorter distances. They call attention to the proportional rates in effect on smelter products from the Missouri River to trunk line territory prior to June 25, 1918, on traffic moving through the Missouri River gateways from Colorado, Utah, and other western states, including Montana, which blanketed the New York rate as far back as Rome. Because of the proposed adjustment under general order No. 28, these proportional rates were canceled on June 25, 1918, leaving in effect the Chicago or the Mississippi River combination. They urge that the rates to New York are influenced by water competition; and state that when an increase in the all-rail rates was proposed in 1915 complainant shipped two trainloads of copper bars to eastern territory via Pacific coast ports. Complainant suggests that perhaps competition from northern Michigan had more influence upon the rates than these two shipments.

Both parties cite *Anaconda Copper Mining Co. v. Director General*, 57 I. C. C., 723, in support of their respective contentions. That decision was limited to a consideration of the rates on smelter products as a whole, which resulted from the increase authorized by general order No. 28, and in so far as rates from Montana to trunk line territory were concerned, we found them neither unreasonable, unduly prejudicial, nor unjustly discriminatory.

The average distance over nine practicable routes from Black Eagle to Rome is shown to be 2,198 miles. Under the rate of \$9.80 in effect prior to June 25, 1918, the yield per ton-mile was 4.46 mills, and under the rate of \$16.50 in effect from that date until August 26, 1920, 7.5 mills. The rates in effect from Anaconda yielded slightly less. It was testified that at the time of hearing the price of copper bars was 14 cents per pound; that when this country was drawn into the war the price was fixed at 23.5 cents, subsequently increased to 26 cents. At the beginning of 1916 the price seems to have been slightly under 20 cents. The carload minimum weight is but 40,000 pounds, but the loading is much heavier. In *Anaconda*

Copper Mining Co. v. Director General, supra, the average loading of copper bullion was shown to be in excess of 40 tons. On the basis of 80,000 pounds a carload would be worth, at the time of hearing, \$11,200, and under the rate of \$16.50 would yield a revenue of \$660, or 30 cents per car-mile for the Black Eagle-Rome distance.

In *Cambria Steel Co. v. Director General*, 60 I. C. C., 459, it was similarly urged that, because the rates on commodities in general from western points to Johnstown, Pa., were usually made arbitraries over Pittsburgh of from 12 to 30 cents, the rate on manganese ore from Philipsburg, Mont., to that destination should likewise not have exceeded the Pittsburgh rate by more than 30 cents. We there said:

The fact that * * * the rates on pig iron, billets, iron and steel articles, and other commodities from certain points to Johnstown were usually made by the addition of arbitraries over the Pittsburgh rates is not a sufficient basis upon which to predicate a finding that the rates assailed were unreasonable under section 1, especially in view of the low ton-mile and car-mile revenues.

We have repeatedly held that the mere reduction of a rate is insufficient to prove that the former higher rate was unreasonable; and in the absence of convincing comparisons the earnings shown can hardly be considered as indicative of unreasonableness.

So far as the record discloses, no shipments of copper bars have ever been made to Utica, nor does it appear that there is competition between copper bars and other traffic which has been and is accorded lower rates to Rome than to New York. The record affords no basis for a finding of undue prejudice. *Peet Bros. Mfg. Co. v. I. C. R. R. Co.*, 34 I. C. C., 634, 637; *Greenbaum Co. v. S. Ry. Co.*, 38 I. C. C., 715, 718.

Prior to August 21, 1920, the rates to Rome were not in accord with the long-and-short-haul provision of the fourth section. The rate to Utica was neither charged nor collected, and complainant made no attempt to prove damage by reason of the collection of higher rates to Rome. Following *Iten Biscuit Co. v. C., B. & Q. R. R. Co.*, 50 I. C. C., 724, 53 I. C. C., 729, no award of reparation can be made.

We find that the rates assailed were not unreasonable, unduly prejudicial, or unjustly discriminatory. The complaint will be dismissed.

CAMPBELL, *Commissioner*, dissenting:

I can not subscribe to the principle announced by the majority herein. Section 4 of the interstate commerce act makes it *unlawful* for any common carrier subject to the provisions thereof to charge or receive any greater compensation in the aggregate for the transportation of a like kind of property for a shorter than for a longer

distance over the same line or route in the same direction, unless authorized in the manner provided. Thus by express inhibition the act declares the rate to the intermediate point unlawful to the extent that it exceeds the rate to the more distant point, subject to the proviso that such rate might have been legalized by the filing of an appropriate application, or by first obtaining permission from us for its publication. But here we have an instance in which the defendant carriers failed to follow the procedure necessary to legalize the rate. Notwithstanding this fact the majority, while finding the rate to be unlawful, denies reparation, or restitution rather, on the ground that complainant did not prove damages; that is, as I understand it, damages due to the preferential treatment accorded the farther distant point. It is worthy of note that the language of this section declares it to be *unlawful* to charge or even to *receive* more for the shorter than the longer distance. Therefore, if a greater charge is received for transportation to the intermediate point the receiving is unlawful, and the charge collected or received is illegal to the extent that it exceeds the charge applicable to the more distant point. There is not only an absolute prohibition of the act of charging but a condemnation of the charge itself.

To my mind the use of the word reparation in our decisions in these cases should be avoided, because of its misleading effect. Reparation in its very elements presupposes damage. I think the word restitution would be more appropriate. Restitution as defined in the Standard Dictionary is—

The act of restoring or returning something that has been taken away or lost; restoration of anything to the one to whom it properly belongs, especially when made by him who has taken it; as, the restitution of property and privileges,

as distinguished from reparation, which is—

The act of making amends, as for an injury, loss, or wrong; also, that which is done by way of amends or satisfaction; atonement; indemnity.

Let us reverse the situation and assume that the shipper had refused to pay the rate published to the intermediate point, which was higher than the rate applicable to the more distant point, and we had held that the intermediate-point rate was an unlawful rate. Can it be conceived that upon an action brought by the carrier to collect from the shipper the higher intermediate rate he could have secured judgment for a rate that was declared to be unlawful? Much less could it be conceived that in such a case the railroad would have gotten judgment for undercharge against the shipper to the intermediate point, who paid only the rate to the farther distant point, unless it was proven that by the collection of such unlawfully published rate he would not be damaged. The intermediate rate having

been declared unlawful, the next step is to find what is the lawful rate to apply at the intermediate point, and the law clearly defines what that shall be by saying:

That it shall be unlawful for any common carrier subject to the provisions of this act to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property for a shorter than for a longer distance over the same line or route in the same direction.

Thus, it is clearly pointed out that the lawful rate which may be *charged and received* is the rate published to the more distant point. That being so, it is obvious to me that to require the carrier to pay back the difference between the amount paid and that applicable to the more distant point is not reparation necessitating proof of damages, but merely restitution on account of the collection of an amount which the act itself condemns as unlawful.

I think, too, that the decisions of this Commission construing the aggregate-of-intermediates provision of section 4, which is a part of the same sentence, can not be harmonized with those on the long-and-short-haul clause. The former provision is that it shall be *unlawful* to *charge* any greater compensation as a through rate than the aggregate of the intermediate rates, and the Commission awards reparation or restitution, without such proof of damage as the majority requires in the instant case. It has done this even though the through charge was found not unreasonable, but fails to apply the same principle in cases of the kind here before us. It should also be noticed that the long-and-short-haul clause goes a step farther than that pertaining to the aggregate of the intermediates in that it provides that it shall be unlawful to receive, while that word does not appear in the aggregate-of-intermediates provision.

The case of *Southern Pac. Co. v. California Adjustment Co.*, 237 Fed., 954, decided by the circuit court of appeals, ninth circuit, on November 6, 1916, is directly in point. The court, in considering the long-and-short-haul provision of the California statute, identical with the language contained in section 4, said that any charge in excess of that for a shorter haul is by the amount of the excess *illegal* and that each violation of that provision furnishes the measure of the shipper's damage therefor. The court, distinguishing the *International Coal Case*, uses this language:

The difference between the case at bar and *Penna. R. R. Co. v. International Coal Co.*, 230 U. S., 184, 33 Sup. Ct. 893; 57 L. Ed., 1446, Ann. Cas. 1915A, 315, and *Knudsen & Co. v. M. C. Ry.*, 148 Fed., 969, 79 C. C. A., 46, is that in those cases the damage to the plaintiff did not appear from the act of discrimination itself; the court holding that the fact that some other shipper was charged less than the lawful rate did not entitle the plaintiff to have its property transported for the same unlawful rate, and that the measure of damages did not appear upon proof alone of the discrimination. In the case 64 I. C. C.

at bar the measure of damages does distinctly appear. The effect of the constitutional provision is to fix a measure of charge and that measure is the charge which is actually made for the longer haul. Any charge in excess of that for a shorter haul is by the amount of the excess illegal, and each violation of that provision furnishes the measure of the shipper's damage therefor.

And in *Louisville & N. R. Co. v. Walker*, 110 Ky., 961, decided by the court of appeals of Kentucky on May 23, 1901, the court, in construing a similar long-and-short-haul provision of the Kentucky statute said:

It was thus made unlawful for the carrier to charge a greater compensation for the same service for a shorter than for a longer distance over the same line in the same direction, the shorter being included within the longer distance. When the charge for the longer haul is fixed, to charge more for the shorter haul is just as clearly illegal as it would be to charge a greater sum than the law allowed where the law itself fixed a sum certain as the limit of the charge. The carrier is allowed by the constitution to fix the rate for the longer haul, but when he so fixes it this rate is the limit, beyond which he cannot go in charging for the same service in the shorter haul. And, when appellant exacted of appellee more than it could legally charge, his right to recover the excess so paid is precisely similar to the right to recover for any other illegal exaction. He whose money is taken from him illegally is to that extent damaged. It is not necessary for appellee to show anything more than that he was compelled to pay more than appellant had a right to charge.

So far as I have been able to ascertain, whenever this question has been before the courts, both state and federal, they invariably have taken this view, and it seems anomalous, to say the least, for this Commission, whose duties are but quasijudicial, to take a position which is contrary to judicial decisions and which has the effect, in cases like this, of rendering the long-and-short-haul provision of section 4 of the act without substantial force and effect.

No. 11996.

CLINCHFIELD COAL CORPORATION

v.

DIRECTOR GENERAL, AS AGENT, CAROLINA, CLINCHFIELD & OHIO RAILWAY COMPANY, ET AL.

Submitted May 21, 1921. Decided September 28, 1921.

Former rate on bituminous coal, in carloads, from Moss, Va., to Toledo, Ohio, found not unreasonable, and present rate found not unreasonable or unduly prejudicial. Complainant not shown to have been damaged by any undue prejudice which may have existed. Complaint dismissed.

W. H. Robertson for complainant.

Henry Thurtell for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation, operating a coal mine at Moss, Va., alleges that the rate on five carloads of bituminous coal shipped during the period from September 1 to October 1, 1919, both inclusive, from Moss to Toledo, Ohio, was unreasonable, unduly prejudicial, and in violation of the long-and-short-haul provision of the fourth section of the interstate commerce act. We are asked to prescribe a just and reasonable rate for the future and to award reparation. Rates will be stated in amounts per net ton.

The shipments moved over the Carolina, Clinchfield & Ohio to Elkhorn City, Ky., Chesapeake & Ohio to Cincinnati, Ohio, and Cleveland, Cincinnati, Chicago & St. Louis beyond, 509 miles. Charges were collected at the applicable combination commodity rate of \$2.55, composed of 65 cents to Elkhorn City and \$1.90 beyond. Contemporaneously defendants maintained a rate over the route of movement to Toledo of \$2.10 from Dante, Va., a more distant point to which Moss is directly intermediate. This departure from the long-and-short-haul provision of the fourth section was and is unauthorized, and therefore unlawful, and should be promptly corrected. Complainant contends that the rate assessed was unreasonable to

the extent that it exceeded the rate from Dante, and asks reparation to that basis.

Complainant's primary market for coal is in the southeastern states. These were experimental shipments for examination and testing, and the only shipments complainant has forwarded to Toledo since its mine at Moss was opened in January, 1919. It compares the rate assailed with contemporaneous rates ranging from \$1.90 to \$2.10 to Toledo from points in Virginia and Kentucky on the Louisville & Nashville, Norfolk & Western, Interstate, and Williamson & Pond Creek, for distances ranging from 380 to 523 miles.

Defendants say that the rates to Toledo, including those from Dante and Elkhorn City, are lower than they would be but for the competition at Toledo of coal from the much nearer coal fields of Ohio; also that the \$2.10 rate from Dante applied from a large group of mines in that field from which the short-line distances to Toledo range from 350 to 450 miles. They compare the rate charged with rates to Chicago ranging from \$2.45 to \$2.60 from mines in Virginia, West Virginia, and Kentucky, on the Norfolk & Western, Chesapeake & Ohio, and Carolina, Clinchfield & Ohio, for distances varying from 438 to 626 miles, and assert that these rates also are less than normal by reason of the competition at Chicago from nearer coal mines in Illinois. Rates of \$2.70 to \$3 from Moss to points in South Carolina and Georgia for distances ranging from 512 to 728 miles are also cited.

At the hearing defendants expressed willingness to publish a rate from Moss to Toledo not in excess of the rate from Dante, and effective June 21, 1921, the rate of \$2.66 applying from group-5 points, which include Elkhorn City, was made applicable from Moss. The present rate from Dante is the group-1 rate of \$2.86. This action satisfies the prayer of the complaint as to the rate for the future. The rate applicable yielded 5 mills per ton-mile, and the \$2.10 rate applicable from Dante if applied from Moss would have yielded 4.1 mills per ton-mile.

We find that the applicable rate was not unreasonable, and that the present rate is not unreasonable or unduly prejudicial. Complainant is not shown to have been damaged by any undue prejudice which may have existed. The complaint will be dismissed.

CAMPBELL, *Commissioner*, dissenting:

For the reasons stated in my dissent in *Anaconda Copper Mining Co. v. Director General*, 64 I. C. C., 136, I am unable to assent to the report herein.

No. 12041.

F. R. PENDLETON AND H. S. GILKEY, DOING BUSINESS
AS PENDLETON & GILKEY,

v.

DIRECTOR GENERAL, AS AGENT, MINNESOTA & INTER-
NATIONAL RAILWAY COMPANY, ET AL.

Submitted May 23, 1921. Decided September 28, 1921.

Allegation that the charges on a carload of white-cedar poles, shipped from Mizpah, Minn., to Albion, Iowa, were assessed on an excessive weight not sustained. Complaint dismissed.

N. E. Boucher for complainant.

R. E. Smith for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner.

Complainants are copartners dealing in cedar posts, poles, and other forest products at Minneapolis, Minn. They allege that the charges collected by defendants on a carload of white-cedar poles shipped June 9, 1919, from Mizpah, Minn., to Albion, Iowa, at the applicable rate of 25 cents per 100 pounds, based upon a weight of 33,400 pounds, were unjust, unreasonable, and unduly prejudicial to the extent that they exceeded charges which would have accrued based upon a weight of 29,750 pounds.

The shipment was forwarded from Mizpah on June 9, 1919, and was weighed the same day at North Bemidji, Minn., a point 51 miles beyond, on the Minnesota & International, the initial carrier, with the following result: Gross, 68,100 pounds; marked tare of car, 34,700 pounds; net 33,400 pounds. The shipment was not weighed at any other point.

Complainants contend that the poles were properly seasoned and that, based on the standard weights of white-cedar posts and poles used by an association of producers of cedar forest products in the territory where the shipment originated, the weight of the shipment

was 29,750 pounds. They rely upon this estimated weight and a letter from an official of the Illinois Central, in whose car the shipment moved, to the effect that on February 6, 1916, the car weighed 35,900 pounds, or 1,200 pounds more than the marked weight as reported by the weighmaster of the Minnesota & International, and that the records of his company do not show any subsequent change in the weight.

The scale at North Bemidji was tested by a scale inspector of the state of Minnesota on June 4, 1918, and again on June 24, 1919. The reports of both of these inspections show the scale to have been in good condition and weighing correctly.

The stock from which the shipment was made was not piled under cover and was not protected from the elements. It is admitted by complainants that weather conditions prior to the loading of the shipment would affect the weight of the poles. No testimony was offered as to what such conditions were or as to the condition of the poles when they were shipped.

The presumption of accuracy which attaches to scale weights must be rebutted clearly to be overthrown. That presumption has not been rebutted in this case and the complaint will be dismissed.

64 I. C. C.

No. 12065.

W. P. PARKS

v.

DIRECTOR GENERAL, AS AGENT, CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, ET AL.

Submitted June 6, 1921. Decided September 28, 1921.

Rates on cattle, in carloads, from Lemesa, Tex., to Moorcroft, Wyo., found not unreasonable. Complaint dismissed.

Robert P. Parker for complainant.

Thomas M. Woodward for Director General, as Agent.

K. F. Burgess, E. E. Whitted, G. A. Hoffelder, and J. Q. Dier for defendant corporations.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a stockman at Moorcroft, Wyo., alleges that the charges collected for the return movement of 28 carloads of cattle shipped in May, 1920, from Lemesa, Tex., to Moorcroft, were unreasonable. Reparation is sought.

On January 7, 1920, complainant shipped 25 carloads of cattle from Midland, S. Dak., to Lemesa for wintering, under the impression that if they were subsequently returned to the north the carriers would apply to the northbound movement one-third of the southbound rate. In May, 1920, complainant shipped the identical cattle, together with their increase, 77 calves, to his ranch at Moorcroft. On the northbound movement freight charges of \$133.20 per car, were collected. There was an overcharge of 20 cents on each car, as the tariff rate was \$133.

Defendants state that there was an undercharge on the southbound movement. The rate which they state as applicable was \$1.015, but according to the tariffs on file it was \$1.065, constructed as follows: Midland to Rapid City, 17 cents; Rapid City to Denver, 34 cents; Denver to Texline, 23 cents; Texline to Lemesa,

25.5 cents; plus 7 cents as per tariff rule covering the construction of combination rates.

At no time was there any tariff authority for the shipment of cattle from Midland to the south with provision for a reduced rate on a subsequent northbound movement. Complainant contends that the carriers should have provided for the application to the northbound movement of one-third of the southbound rate, and refers to the fact that from points in Wyoming and some few points in western South Dakota such a basis was provided.

Such reduced return rates were established by the Director General of Railroads as emergency rates to prevent the cattle in Wyoming and the extreme western part of South Dakota from dying of starvation. The tariff required that the northbound movement be of the identical stock to point of origin and over the same route as that used southbound. Midland is several hundred miles east of Moorcroft and not intermediate thereto from Lemesa. The reduced return rates were not made applicable on cattle which had been shipped southbound from Midland, because no emergency existed in that vicinity. Complainant concedes that the high price of winter feed was the cause which moved him to ship his cattle to Texas. No evidence was submitted that the rate applicable on the northbound movement was excessive.

We find that the applicable rate was not unreasonable. The complaint will be dismissed.

No. 12099.

LE PRESTRE MILLER STOCK FARMS, INCORPORATED,
v.
ERIE RAILROAD COMPANY.

Submitted June 17, 1921. Decided September 28, 1921.

Rates on ashes, in carloads, from Paterson, N. J., to Goshen, N. Y., found to have been unreasonable. Reparation awarded.

E. A. Hodgkinson for complainant.

Marion B. Pierce for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation, by complaint filed January 6, 1921, as amended, alleges that the rates charged on 19 carloads of ashes shipped between June 30 and December 28, 1917, both inclusive, from Paterson, N. J., to Goshen, N. Y., were unreasonable and in violation of the long-and-short-haul provision of the fourth section of the interstate commerce act. Reparation only is sought.

The shipments aggregated 1,695,200 pounds. Freight charges of \$1,091.29 were collected thereon at the applicable sixth-class rates of 5.8 and 6.5 cents per 100 pounds, minimum 50,000 pounds. The rate first mentioned was assessed on two cars which moved prior to August 1, 1917. During the period of movement there was in effect from Croxton, N. J., to Goshen a commodity rate of 79 cents per net ton, minimum 60,000 pounds, which was published subject to rule 77 of our Tariff Circular 18-A. Paterson is intermediate to Croxton on traffic moving to Goshen. Reparation to the basis of the rate in effect from Croxton is sought.

Complainant submitted a number of comparisons to show that the rates assailed, which yielded returns of approximately \$1.20 and \$1.35 per car-mile and 2.7 cents and 3 cents per ton-mile, were excessive for the 43-mile single-line haul. The shipments were made in coal cars which otherwise would have returned empty, and the movement required no intermediate handling.

Defendant concedes that the rates complained of were unreasonable, but contends (1) that complainant has not proven damage, a

contention precluded by the decision in *Southern Pac. Co. v. Darnell-Taenzer Co.*, 245 U. S., 531, and (2) that complainant's claim was barred under the act to regulate commerce and that section 206 (f) of the transportation act, 1920, enacted after the running of the prior statute, could not, by excluding the period of federal control, revive the claim. We have found otherwise. *Thomas Iron Co. v. Director General*, 57 I. C. C., 657.

We find that the rates assailed were unreasonable to the extent that they exceeded 79 cents per net ton; that the shipments were made as described; that complainant ultimately paid and bore the charges thereon; that it has been damaged in the amount of the difference between the charges paid and those which would have accrued at the rate herein found to have been reasonable; and that it is entitled to reparation in the sum of \$421.71, with interest.

An appropriate order will be entered.

64 I. C. C.

No. 12118.
WEST KENTUCKY COAL COMPANY
v.
DIRECTOR GENERAL, AS AGENT.

Submitted June 9, 1921. Decided September 28, 1921.

Four carloads of coal from Clay, Ky., to Clinton, Iowa, found to have been misrouted. Reparation awarded. Rate applicable over route shipments should have moved found not unreasonable.

James G. Wheeler and *C. W. Craig* for complainant.

William Burger for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation mining coal, alleges that the rate of \$3.45 charged on four carloads of coal, shipped January 20, 26, and 27, 1920, from Clay, Ky., to Clinton, Iowa, was unjust and unreasonable, unjustly discriminatory, and unduly prejudicial. We are asked to award reparation. Rates are stated in amounts per net ton.

Complainant's mine, from which the shipments moved, is situated in the vicinity of Clay and Wheatcroft, Ky., its respective billing stations on the Louisville & Nashville and Illinois Central. Switch tracks, owned by complainant, connect the mine with the lines of these carriers. The Illinois Central published a joint rate of \$1.95 from Wheatcroft to Clinton, and complainant forwarded most of its shipments over that line. At the time the shipments moved a shortage of cars on the Illinois Central is claimed by complainant to have existed, and inasmuch as the cars for these shipments were supplied by the Louisville & Nashville, complainant felt it to be its duty to deliver the outbound shipments to that carrier, although it apparently was not compelled to do so.

Two of the shipments were routed "L. & N.-C. & N. W. delivery." Of the bills of lading covering the other two shipments, one contained no routing instructions and one showed "C. & N. W. delivery" only. No rate was inserted in any of the bills of lading. The shipments moved over the Louisville & Nashville to Evansville, Ind., the Cleveland, Cincinnati, Chicago & St. Louis and New York Central

to Chicago, Ill., and thence over the Chicago & North Western to destination. The Louisville & Nashville did not participate in a joint rate to Clinton, and charges on the shipments, which weighed 159.17 tons, were originally assessed at a combination rate of \$3.45. That rate was without tariff authority and refund was subsequently made to complainant to the basis of a rate of \$3.35, composed of \$1.80 to Chicago and \$1.55 beyond. The freight charges were paid at destination, but the excess above those that would have accrued at a rate of \$1.95 was borne by complainant.

Complainant urges that, as the carriers were under unified control and operation and not in competition, the rate of \$1.95 should have been applied on these shipments delivered to the Louisville & Nashville. That rate was not published to apply over the Louisville & Nashville, and the fact that the lines were under federal control did not affect the validity of the legally established rates over the separate routes. In the circumstances it was the duty of the Louisville & Nashville to forward the shipments by the cheapest available route consistent with such routing instructions as were given.

Complainant further contends that the Louisville & Nashville should have declined to handle the shipments and turned them over to the Illinois Central for carriage at the lower rate, plus a switching charge at Clay. In addition to the fact that two of the shipments were specifically routed "L. & N.," the Louisville & Nashville's switching tariff shows that it has no interchange connection with the Illinois Central at that point. Defendant admits that the shipments were misrouted, and is willing to refund the charges in excess of those that would have accrued at a rate of \$2.85, composed of 90 cents to Henderson, Ky., and \$1.95 beyond, applicable over the Louisville & Nashville to Henderson, the Illinois Central to Peoria, Ill., and the Chicago & North Western to destination. Complainant refers to a rate of \$2.55, based on Providence, Ky., but the factor from Clay to Providence was not applicable on interstate traffic. The rate of \$2.85 was the lowest available combination, and complainant has, therefore, been damaged to the extent of the difference between this rate and the rate charged. There remains for consideration the question of the reasonableness of the \$2.85 rate.

Except for comparisons of the distances and rates over the Louisville & Nashville and the Illinois Central, complainant offered but little evidence on the question of unreasonableness. The record contains no evidence of unjust discrimination or undue prejudice.

Defendant introduced exhibits showing, among others, the rates on coal from Louisville & Nashville western Kentucky mines to points in Arkansas; from Illinois mines to points in Kansas, Missouri, and Iowa; from Chicago, Peoria, and East Clinton, Ill., to Kansas,

Iowa, and Nebraska; and from Virginia, Tennessee, and Alabama mines to various points in the southeast. With these the rate of \$2.85 compares favorably for similar distances.

Complainant questions the value of these comparisons, because no showing is made as to the similarity of transportation conditions. They are of value as reflecting the general level of coal rates with which the rate here under consideration might ordinarily be compared. Complainant, as indicated, relies principally on the existence of the lower rate over the Illinois Central. We have frequently held that a rate over a particular route is not presumed to be unreasonable merely because a lower rate applies over another route.

We find that the rate of \$2.85 per net ton was not unreasonable or otherwise unlawful; that the shipments were misrouted; that complainant made the shipments as described and paid and bore the excess charges thereon; that it has been damaged by the misrouting in the amount of the difference between the charges borne and those which would have accrued if the shipments had been forwarded by the route over which the rate of \$2.85 applied; and that complainant is entitled to reparation in the sum of \$79.58, with interest.

An order awarding reparation will be entered.

64 I. C. C

No. 12126.

PARKERSBURG RIG & REEL COMPANY

v.

DIRECTOR GENERAL, AS AGENT, BALTIMORE & OHIO
RAILROAD COMPANY, ET AL.

Submitted June 30, 1921. Decided September 28, 1921.

Rates on steel crown blocks and steel calf-wheel and bull-wheel shafts, in carloads, from Parkersburg, W. Va., to Eastland and Ranger, Tex., found unreasonable. Reasonable maximum relationship of rates prescribed, and reparation awarded.

V. E. Milsark for complainant.

Charles R. Webber, R. C. Trovillion, and L. M. Hogsett for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation engaged in the manufacture and sale of well-drilling machinery and oil-well supplies at Parkersburg, W. Va., alleges that the rates charged on one carload of steel crown blocks and three carloads of steel calf-wheel and bull-wheel shafts, shipped between September 16, 1919, and January 28, 1920, from Parkersburg to Ranger and Eastland, Tex., were unreasonable and unduly prejudicial to the extent that they exceeded the rates applicable on oil-well supplies in mixed carloads. Reparation only is asked. Rates will be stated in amounts per 100 pounds.

The shipment of steel crown blocks moved to Eastland on September 16, 1919, and weighed 34,400 pounds. Charges were collected at the second-class less-than-carload rate of \$2.155, applicable on oil-well supplies. Two shipments of steel shafts moved to Eastland on October 17 and November 5, 1919, and one to Ranger on January 28, 1920. They averaged 52,111 pounds in weight. Charges were collected at rates of \$1.07, \$1.25, and \$1.19, respectively.

Steel crown blocks are necessary parts of an oil-drilling outfit and in drilling operations are placed at the top of the derrick. They consist of heavily bolted steel channels, separated by iron spacers, containing a series of adjustable iron pulleys, through which the drilling

cable and wire lines used in handling the casing move. A steel bull-wheel shaft consists of a piece of pipe $\frac{3}{4}$ of an inch in thickness, 16 inches in diameter, and 13.5 feet in length; grey-iron castings are bolted near each end of the pipe, to serve as hubs for the attachment of the wooden parts of bull wheels; and a machine-turned gudgeon is bolted to each extremity of the pipe, to act as an axle in revolving the complete bull wheel. Apparently calf-wheel shafts are similar to bull-wheel shafts, except that they are somewhat shorter, and have but one casting attached.

At the time of movement of the crown blocks a commodity rate of \$1.07 was in effect on oil-well supplies, in mixed carloads. In western classification crown blocks were rated second class in less-than-carload quantities, but no carload rating was named. This commodity being indexed by name, the class-A rating provided for "Machinery, n. o. i. b. n.," which defendants contend was applicable, could not be applied. On December 30, 1919, consolidated classification No. 1 provided rating of class A on oil-well outfits and supplies, including steel crown blocks, in straight or mixed carloads. The class-A rate, Parkersburg to Eastland, when this shipment moved was \$1.25.

Complainant urges that steel crown blocks are manufactured specially as integral parts of oil-drilling outfits, and are not adapted to other uses; that if they are parts of oil-well outfits when shipped less than carload, their movement in carloads does not alter their character; that there is no dissimilarity in the transportation characteristics of crown blocks which warranted the application of a higher basis when they moved in straight carloads than when shipped in mixed carloads with other oil-well supplies. These contentions are borne out by the classification and tariff changes which have occurred since the movement.

Prior to December 30, 1919, the western classification provided rating of second class, less than carload, and class A, carload, on oil-well supplies, including calf and bull wheels, in mixed carloads. On that date consolidated classification No. 1 became effective, carrying the same ratings on oil-well outfits and supplies, including calf and bull wheels, in straight or mixed carloads. Neither the western classification nor consolidated classification No. 1 carried ratings indexed by name on calf-wheel and bull-wheel shafts. During the period covered by the complaint these articles were subject to the carload class-A rating provided for shafts under power-transmission machinery. The class-A rates at time of movement of these shipments were, to both Eastland and Ranger, \$1.25. Two of the shipments were therefore undercharged.

On October 17, 1919, when the first car of steel calf-wheel and bull-wheel shafts moved, a commodity rate of \$1.07 was applicable

on oil-well supplies, in mixed carloads. By the time the two subsequent shipments of the same commodities moved this rate had been increased to \$1.08.

Complainant shows that the value of a steel bull-wheel shaft is about \$100, as compared with \$250 for the bull wheel complete; that shipments of steel shafts load more heavily and are less susceptible to damage in transit than steel bull wheels.

Complainant contends that the term "oil-well outfits and supplies" comprehends any of the articles, or parts thereof, necessary to put an oil-well drilling outfit into operation, and upon this premise concludes that shafts, being parts of calf and bull wheels, should take the same rates as the complete article, in straight carloads; that calf-wheel and bull-wheel shafts, when shipped together, constitute mixed carloads, the two articles being distinct in character and uses; that bull-wheel shafts are constructed particularly for use with bull wheels, and are not adapted for other purposes.

Defendants urge that the rates on oil-well supplies are unduly low as compared with rates on commodities said to be analogous, such as agricultural implements, cream and cheese separators, scale indicators, and beams. The comparison does not show minimum or average car loading, or the per-car, car-mile, or ton-mile earnings, but is a comparison solely of rates. Defendants say that a steel bull-wheel shaft is distinguishable as such only when it is part of the completed bull wheel; that when shipped alone, it is a steel transmission shaft, subject to the rate applicable to that kind of machinery.

We find that the rates on carload shipments of steel crown blocks and steel calf-wheel and bull-wheel shafts from Parkersburg, W. Va., to Eastland and Ranger, Tex., were, are, and for the future will be, unreasonable to the extent that they exceeded or may exceed the rates, subject to the carload minimum weight, contemporaneously maintained on oil-well supplies in mixed carloads; that complainant made the shipments as described, and paid and bore the charges thereon; that it has been damaged in the amount that the charges paid exceeded those which would have accrued at the rates herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with rule V of the Rules of Practice. Collection of the undercharges may be waived, but the statement submitted under rule V should include the data concerning those shipments.

An order for the future will be entered.

No. 12361.

GRAYSON OWEN COMPANY

v.

DIRECTOR GENERAL, AS AGENT, NEVADA-CALIFORNIA-
OREGON COMPANY, ET AL.

Submitted May 16, 1921. Decided September 28, 1921.

Charges for unperformed out-of-line movement from Halvern, Calif., to Alvarado, Calif., in connection with the transportation of cattle, in carloads, from points in California and Nevada to Oakland, Calif., found illegal. Reparation awarded.

E. W. Hollingsworth for complainant.*C. W. Durbrow* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Complainant, a corporation engaged in the purchase and sale of live stock at Emeryville, Calif., alleges that the charges collected by defendants for the transportation of certain carloads of live stock shipped during the period from January 1, 1918, to March 1, 1920, from points in California and Nevada on the lines of defendants Nevada-California-Oregon Railway, McCloud River Railroad, and Southern Pacific Company, to the stockyards at Oakland, Calif., stopped in transit to feed at Alvarado, Calif., were unjust and unreasonable to the extent that a charge per car was assessed for an unperformed movement from Halvern, Calif., to Alvarado and return. We are asked to award reparation. The two defendants first above named were released from federal control July 1, 1918.

When the Southern Pacific established feeding in transit at Alvarado that point was reached only by a narrow-gauge line extending from Halvern, and in addition to its stop-off charge of \$5 for feeding it established a charge of \$5 per 36-foot car for the extra service from Halvern to Alvarado and return. On June 25, 1918, the latter charge was increased to \$6.50 per 36-foot car. Before these shipments moved the line upon which Alvarado was located was made standard gauge, became a part of the main line of the Southern Pacific, and out-of-line haul was thereafter unnecessary. The charge for the extra service was not eliminated from the tariff until Decem-

ber 31, 1919. Defendants admit that the service covered by this charge was not performed.

We find that the charges assessed were illegal to the extent that they exceeded the through rates applicable from origin to final destination, plus an additional charge of \$5 per car for the transit service; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged thereby in the amount of the charges paid for the unperformed haul from Halvern to Alvarado and return; and that it is entitled to reparation, with interest. Complainant should comply with rule V of the Rules of Practice.

64 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 1338.

CLASS AND COMMODITY RATES BETWEEN NORTH
PACIFIC COAST POINTS.

Submitted September 29, 1921. Decided October 19, 1921.

Proposed revision of class and commodity rates in territory west of the Cascade Mountains extending from Portland, Oreg., on the south to Vancouver, British Columbia, on the north, found justified except as indicated. Suspended schedules ordered canceled without prejudice to the establishment of rates in conformity with findings herein.

Thomas Balmer, Geo. T. Reid, J. W. Quick, L. B. da Ponte, A. J. Laughon, A. C. Spencer, and Herbert Wing for respondents.

Joseph N. Teal, S. J. Wettrick, Jay W. McCune, R. D. Lytle, Seth Mann, and C. O. Bergan for various protestants.

Raymond W. Clifford for Department of Public Works, state of Washington.

Hal F. Wiggins for Public Service Commission of Oregon.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

By schedules filed to become effective May 27, 1921, respondents propose to revise, as hereinafter explained, their class and commodity rates between points in the territory extending from Portland, Oreg., on the south to Vancouver, British Columbia, on the north, including that part of the states of Washington and Oregon west of the Cascade Mountains. Numerous protests having been filed by interested shippers and commercial organizations, the schedules were suspended until October 24, 1921, and, by supplements, respondents voluntarily postponed the effective date to December 1, 1921. The rates named in the suspended schedules are intended for application upon interstate, foreign, and intrastate traffic. The Department of Public Works, state of Washington, also suspended the schedules so far as applicable to Washington intrastate traffic. A hearing has been held jointly with that department, in which all aspects and applications of the suspended schedules were considered. This report will be confined to the interstate and international situations.

The changes proposed may be generally stated as follows: (1) Increases in many class rates; (2) increases in many of the carload

commodity rates; (3) cancellation of all less-than-carload commodity rates and certain carload commodity rates.

Of the 7,152 class rates named in the schedules, 3,586, or 50.1 per cent, represent increases over existing rates, 2,450, or 34.3 per cent, remain unchanged, and 1,116, or 15.6 per cent, represent reductions. By far the majority of the class rates named are for intrastate application between points in Washington, although, from the standpoint of traffic affected, that moving interstate will constitute at least half in revenue. The interstate and international rates involved are mainly between Portland and Astoria, Oreg., or Vancouver, British Columbia, on the one hand, and points in Washington on the other. The rates between Portland and Seattle, Fuller, and Auburn, Wash., and between Vancouver, British Columbia, and Seattle may be taken as typical of the situation existing generally as to the interstate and international rates. Auburn is intermediate to Seattle on the route from Portland. Fuller is on the Grays Harbor branch of the Oregon-Washington Railroad & Navigation Company. The present class rates between the points referred to, together with those proposed by respondents, are given below. Throughout this report rates are stated in cents per 100 pounds.

Haul.	Distance.	1	2	3	4	5	A	B	C	D	E
Between Portland and—	<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Seattle.....	175	¹ 47	39.5	36.5	31.5	31.5	31.5	28	25	22	17.5
Fuller.....	125	¹ 65.5	58	49	44	37.5	33	30	27	22	17.5
Auburn.....	160	¹ 70.5	62.5	53	47	42.5	39.5	34.5	31.5	27	22
		² 75	64	52.5	45	37.5	37.5	30	25	22	17.5
Between Vancouver and Seattle.....	156	¹ 72	61.5	50	44	36.5	44	36.5	28	24	19
		² 75	64	52.5	45	37.5	37.5	30	28	24	19

¹ Present rates.

² Proposed rates.

The present scale of class rates between Portland and Seattle, which begins with a first-class rate of 47 cents, is the outgrowth of a scale established by certain of respondents more than 30 years ago to meet actual water competition. As originally published it began with a first-class rate of 30 cents. The water scale, which measured the maximum for the rail scale, also began with a first-class rate of 30 cents and was graded down through the various classes to produce a rate of 12 cents at class E. Although the first-class rate was the same by rail as by water, the rail and water rates for the other classes were somewhat different. The rail rates thus established generally remained unchanged for approximately 28 years, or until June 25, 1918, when under general order No. 28 of the Director General of Railroads the first-class rate became 37.5 cents. Under the general increase effective August 26, 1920, the first-class rate became

47 cents. The 47-cent scale is also in effect to other water points and is here sought to be increased. While, as stated, Auburn is intermediate to Seattle the class rates to that and other intermediate points are considerably higher than to Seattle and the other water points. The class rates northbound from Seattle to points in British Columbia are also influenced by water competition but are not on as low a basis as those southbound.

The matter of revising these class rates has been agitated by the interested carriers for a number of years. As the rates were originally established to meet water competition, which has largely disappeared, the carriers are carrying higher rates from intermediate than from more distant water points. Therefore, in 1920, they filed schedules, to become effective September 24, 1920, proposing to revise these rates by putting them on the distributive distance class-scale basis in effect generally in Washington and Oregon. The basis for this scale was prescribed by us in 1911 in *Portland Chamber of Commerce v. O. R. R. & N. Co.*, 21 I. C. C., 640, for application eastbound from Tacoma, Seattle, and Portland to interstate destinations, and the scale itself was prescribed for intrastate application within Washington and Oregon by rate-making commissions of those states. The scale so prescribed was put into effect throughout this territory and became applicable on eastbound and westbound traffic from Tacoma, Seattle, and Portland, but the carriers voluntarily refrained from applying it to the coastwise traffic at that time. Upon protests we suspended these schedules. Subsequently, with our consent, the protested schedules were withdrawn, and an order was entered discontinuing the investigation without prejudice to the right of the carriers later to file tariffs providing similar increases. The suspended schedules here under consideration were thereafter filed.

The scale now proposed is considerably lower than that proposed in 1920, which began with a first-class rate of \$1.08. The scale here in issue was constructed by building from the first-class rate, which was arrived at after consideration of the commercial competition between San Francisco, Seattle, and Tacoma in the Portland market. The first-class rail rate from San Francisco to Portland is 80 cents, and the corresponding water rate by regular lines was, at the time of the hearing, 70.5 cents. The scale beginning with a first-class rate of 75 cents was selected as one which would place the Washington points on about a parity with San Francisco at Portland. Applied from Seattle to points south thereof the scale proposed is, in practical effect, the application of the distributive distance scale prescribed by the Washington commission, plus the general increases, until the maximum rate of 75 cents is reached at Chehalis, 94 miles from Seattle. From that point to Portland the

rates are blanketed. Northbound from Portland to Washington points the scale proposed is also on the distributive distance-scale basis until the maximum rate of 75 cents is reached at Centralia, 92 miles north of Portland, and from Centralia to Seattle the rates are blanketed. The proposed scale extending northbound from Seattle is on the distributive distance-scale basis up to a maximum of 60 cents first class at Anacortes, from which point the 60-cent rate is blanketed to include Bellingham, 99 miles from Seattle. From Bellingham the 75-cent rate is blanketed to British Columbia points, about 157 miles distant. In grading the scale through the various classes the percentage relationships prescribed by us were used, except for classes C, D, and E, where reductions in the present rates, which respondents assert are already low enough, would have resulted. All fourth section departures were removed by the method of gradation used.

The following statement compares the present and proposed rates for the first four classes between Portland and Seattle and representative points in Washington with other class rates in effect in the surrounding territory:

	Class 1.	Class 2.	Class 3.	Class 4.
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Between Portland and Seattle, 175 miles:				
Present rates.....	47	39.5	36.5	31.5
Proposed rates.....	75	64	52.5	45
Washington, Oregon, and interstate distributive class basis ¹	108	89.5	74	62.5
Washington distance class basis.....	115.5	99	81.5	69
Interstate distance class basis.....	140.5	120.5	99	84.5
Between Portland and Fuller, Wash., 127 miles:				
Present rates.....	65.5	58	49	44
Proposed rates.....	75	64	52.5	45
Washington, Oregon, and interstate distributive class basis ¹	90.5	77	64.5	55
Washington distance class basis.....	100	84.5	70.5	59
Interstate distance class basis.....	112.5	95.5	78	67.5
Between Portland and Auburn, Wash., 160 miles:				
Present rates.....	70.5	62.5	53	47
Proposed rates.....	75	64	52.5	45
Washington, Oregon, and interstate distributive class basis ¹	100	84.5	70.5	59.5
Washington distance class basis.....	109.5	94	77	65.5
Interstate distance class basis.....	131.5	111.5	92.5	78

¹ Rates prescribed by us, and by the respective state commissions, for application as maxima in this general territory.

The increases between Portland and Seattle and other water points are more marked than those between Portland and the intermediate points, the higher rates to which are protected by fourth section applications or as to which fourth section relief has been obtained by respondents.

The present and proposed rates between Seattle and Vancouver, British Columbia, for the first four classes are contrasted below with rates which would result from the application of the distributive distance scale. The Seattle-Vancouver rate is illustrative of the gen-

eral class-rate level between the Washington and British Columbia points involved:

	Class 1.	Class 2.	Class 3.	Class 4.
Between Seattle and Vancouver, British Columbia, 156.8 miles:	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Present rates.....	72	61.5	50	44
Proposed rates.....	75	64	52.5	45
Distributive distance scale.....	100	84.5	70.5	59.5

The increases in the northbound class rates are not as marked as in those southbound, and under the proposed scale the northbound rates for classes A and B would be reduced 6.5 cents. If the prescribed relationships between classes were observed, reductions in classes C, D, and E would also result. Apparently the intrastate rail rates on many commodities from Seattle to Anacortes and Bellingham, Wash., are now less than the water rates.

Increases in carload commodity rates between Portland and points in Washington and between Washington points and destinations in British Columbia are also proposed. The following table, compiled from exhibits of record, shows the present and proposed rates, with earnings per car based on the carload minima, on the commodities affected moving between Portland and Seattle:

Commodity.	Carload minimum.	Present rate.	Proposed rate.	Earnings per car	
				At present rate.	At proposed rate.
	<i>Pounds.</i>	<i>Cents.</i>	<i>Cents.</i>		
Bags and bagging.....	40,000	15.5	25	\$62.00	\$100.00
Canned goods.....	36,000	19	25	68.40	90.00
Cider and vinegar.....	34,000	24	25	81.60	85.00
Cordage.....	30,000	19.5	25	58.50	75.00
Fruit, dried.....	24,000	24	30	57.60	72.00
Furniture.....	18,000	31.5	35	56.70	63.00
Hides, green, and tallow.....	¹ 30,000	15.5	25	46.50	90.00
Iron and steel sash weights.....	40,000	15.5	20	62.00	80.00
Iron and steel, structural.....	40,000	19.5	20	78.00	80.00
Iron and steel, bar.....	40,000	19.5	20	78.00	80.00
Linoleum.....	30,000	24	30	72.00	90.00
Meats, fresh.....	25,000	31.5	35	78.75	87.50
Nails and wire, iron or steel.....	40,000	24	25	96.00	100.00
Oil, tar, or wood.....	30,000	24	25	72.00	75.00
Packing-house products.....	30,000	24	25	72.00	75.00
Paints, dry or in oil.....	40,000	24	25	96.00	100.00
Paper, building or roofing.....	36,000	19.5	25	70.20	90.00
Paper, news, wrapping, bags, etc.....	36,000	19.5	25	70.20	90.00
Peanuts, shelled or unshelled.....	² 24,000	24	30	57.60	90.00
Pickles, kraut, cucumbers, etc.....	¹ 24,000	24	25	57.60	90.00
Pipe, iron or steel.....	³ 40,000	24	25	96.00	90.00
Rice.....	40,000	19.5	25	78.00	100.00
Sugar.....	36,000	19	25	68.40	90.00
Syrup and molasses.....	³ 40,000	15.5	25	62.00	90.00
Tin plate.....	40,000	19.5	25	78.00	100.00

¹Carload minimum proposed to be increased to 36,000 pounds.

²Carload minimum proposed to be increased to 30,000 pounds.

³Carload minimum proposed to be decreased to 36,000 pounds.

The rates and earnings in the foregoing table may be compared with rates and earnings on commodities which, while carried in the proposed schedules, would sustain no increase. The commodities referred to load heavily and in the main are of low grade. Examples are common brick, cement, fertilizer, plaster, pig iron, sand and gravel, coal tar, cereal or fruit beverages, and hemp, the rates on which range from 13 cents on cement to 31.5 cents on alfalfa seed. The earnings per car, based on carload minima of from 30,000 to 80,000 pounds, range from \$62 to \$114, the average of all being \$85 per car, as compared with average earnings of \$87 per car under the proposed carload commodity rates.

Respondents also contrasted the proposed carload rates on the commodities shown in the foregoing table from Seattle and Tacoma to Portland, 175 and 142 miles, respectively, with rates on the same commodities from the same points to the interior Washington points of Yakima, Walla Walla, and Spokane. The rates on all these commodities to Yakima, 161 miles from Seattle and 157 miles from Tacoma, the point most comparable in distance, are in general on the class basis and are from 60 to over 100 per cent higher than the commodity rates proposed between Seattle and Tacoma and Portland. It is pointed out that the operating conditions between the Puget Sound cities and the interior Washington cities named involve difficulties in operation, such as the ascent of the Cascade Mountains, which are not found in the territory covered by the rates here in question.

Of the 31 carload commodity rates now in effect between Seattle and Vancouver, British Columbia, increases are proposed in 10 items. In 19 instances no change is made in the present rates, and in 2 cases reductions would result. The increases of consequence are on deciduous fruits, citrus fruits, bananas, fresh meats, and sash and doors. The present rates on these commodities are 31.5, 27.5, 31.5, 31.5, and 24 cents, respectively, the first four of which it is proposed shall be increased to 35 cents and the last to 30 cents. The other increases proposed amount to 1 cent per 100 pounds in each instance, the commodities affected being freight cars, structural iron, creosote oil, paper, and rice. In the case of all increases the present water rates between Seattle and Vancouver, British Columbia, including handling and toll, are higher than the proposed rail rates.

Less-than-carload commodity rates of 24 cents are now in effect from Portland, Seattle, and Tacoma to Grays Harbor and Willapa Bay points on various grocery and a few hardware items. The only less-than-carload commodity rates between Seattle and Portland are on cordage and twine and bags and bagging. These are also 24 cents. Respondents propose to cancel all these commodity rates

and to apply in lieu thereof class rates. All of the items mentioned come within the first four classes, and increases in rates ranging from 21 cents to 51 cents would result. Respondents contend that these commodity rates are not remunerative. The record indicates that less-than-carload freight in this territory weighs from 9,000 to 15,000 pounds per average carload. The average earnings on 72 cars moved between Seattle, Tacoma, and Portland during a short test period were \$42.19 per car. Respondents also referred to the high cost of handling less-than-carload freight through the warehouses, which ranged from 87.9 cents per ton at Hoquiam to \$1.14 per ton at Seattle.

The specific commodity rates which it is proposed to cancel were not pointed out on the hearing. A check of the schedules under suspension indicates that the carload rates canceled are on cement, plaster, stucco, and roofing pitch in straight or mixed carloads or in mixed carloads with lime from Portland, Oreg., to Bacus, Stillwater, Carnation, and Woodruff, Wash.; canned goods, cereals, iron and steel articles, pig iron, pickles, iron or steel rails, iron or steel pipe, sash and doors, sugar, sirup, and molasses, from Portland to Bay City, Wash., or in the reverse direction; poultry and stock feed from Portland to Barlow Pass, Monte Cristo, and Sultan, Wash.; tin cans from Portland to Bellingham, Wash.; empty cement bags from Portland to Concrete, Wash.; tin-can stock from Portland to Everett; terra cotta in straight carloads or in mixed carloads with sewer pipe from Vancouver and New Westminster, British Columbia, to Seattle; brick from Great Northern Clay Company's spur, Wash., to Vancouver and New Westminster, British Columbia; and tile from Portland to Vader, Wash. The record is silent as to the reasons for the cancellation of these carload commodity rates and the application of the higher class rates.

Protestants doing business upon or from Puget Sound, principally located at Seattle and Tacoma, emphasize the favorable transportation conditions under which the traffic moves. They point out that the territory affected by the proposed increases is without difficult operating conditions; that it is mainly level; is served by lines which carry both heavy through and local traffic; and that between Seattle and Portland three of the railroads use one line. The 1920 census showed the population of this territory, which covers approximately 22,500 square miles, to be 915,000. Lumbering, farming, dairying, fruit growing, mining, and stock raising are the chief industries. Protestants claim that these favorable considerations show that the present long-standing adjustment reflects the true traffic and transportation conditions and should not be disturbed by such increases in rates.

The Puget Sound protestants call to our attention, as favorably comparing with the present intrastate class rates between Seattle and points in Washington from 38 to 142 miles distant, rates from San Francisco, Salt Lake City, St. Paul, Minneapolis, and Omaha to equidistant points. Otherwise they made little effort to show by any of the recognized standards of comparison that the proposed rates are unreasonably high. They place their chief reliance upon a presentation of the existing commercial and business relationships in the locality affected. They feel certain that the proposed increases will so disturb such existing relationships that the present jobbing territories will be seriously delimited because of the necessity of equalizing rates when competing for business in this territory, and that as an inevitable result traffic will cease to move. Vancouver, British Columbia, Bellingham, Everett, Seattle, Tacoma, Olympia, Aberdeen, Centralia, Chehalis, and Vancouver, Wash., and Portland and Astoria, Oreg., are the principal points affected. Jobbing houses located in the principal cities compete with each other in the distribution of their products to interior points. In most markets competition with California industries is also an important factor by reason of the low rates by tramp steamers from California water points to Portland, Astoria, Grays Harbor, and other northern ports. The tramp steamers make no regular sailings, and there is no stability in the rates charged by these irregular water lines. The California merchants also have less-than-carload rail commodity rates on many items from San Francisco to Portland, which are used as factors in making combination rates to Oregon points on the Southern Pacific in the Willamette Valley, while the Washington jobbers competing in that territory must pay the combination of class rates on Portland. The Southern Pacific is not a respondent in this case. The proportional less-than-carload commodity rates from San Francisco to Portland are about equal to the present class rates from Seattle to Portland. The local rate from Portland to the Willamette Valley point is added to each. If the Seattle-Portland class rates are increased as proposed, the Washington jobbing points will be at a distinct disadvantage although less distant from this consuming territory than is San Francisco. From Portland to points north of Seattle the rates are generally slightly less than the combinations on Seattle, so as to insure the entire haul for the carrier operating through to destination.

As further illustrative of the anticipated handicap to the Puget Sound protestants they compare the present and proposed class rates from Seattle to Astoria for the first four classes with corresponding water rates from San Francisco and Portland to the same destination. In addition, the steamship lines maintain a large number of

commodity rates from San Francisco to Astoria. These protestants point out that they must now make heavy absorptions in the rail charges from Puget Sound in meeting the competition of San Francisco at Astoria, and claim that the proposed rates will effectually bar them from this territory. Obviously the rates of the water carriers, regular or tramp, from San Francisco to Astoria and Portland, afford but unsubstantial bases for determining reasonable all-rail rates from Puget Sound to those Oregon points.

The retention of the less-than-carload commodity rates from Seattle and Tacoma to Grays Harbor points is urged on the ground of commercial necessity. Even under existing rates merchants at Puget Sound are forced to make absorptions because of competition with California jobbers who ship their products by steam schooners engaged in the lumber trade from the northwest ports to San Francisco. The preponderating and regular tonnage for these schooners is from the Washington ports southbound to California. As the schooners would otherwise return empty, they make very low rates northbound on whatever merchandise is available. No regular tariff rates are maintained by these vessels and their charges are neither uniform nor constant. Representatives of the Puget Sound grocery jobbers assert that if the increased rates are permitted to go into effect they will have no option but to withdraw from Grays Harbor and abandon that territory to San Francisco and other California competitors. The movement between these points is wholly within Washington, and we do not deal with that situation.

Numerous shippers and representatives of various lines of business appeared at the hearing and testified as to the specific increases that would be imposed on particular commodities. Their testimony was to the effect that commercial and competitive conditions require that rates be maintained on their present bases, especially now when the trend of prices is downward, and that business will be seriously impaired if the proposed schedules are found justified.

The class-rate structure in effect in this general territory, except for that portion covered by the schedules here suspended, was founded upon our order in *Portland Chamber of Commerce v. O. R. R. & N. Co.*, *supra*, and upon orders of the Oregon and Washington commissions entered about the same time. When the class-rate structure was made effective the carriers did not increase the class rates applicable to traffic in a general northerly and southerly direction west of the Cascade Mountains, and such traffic has had the advantage of a considerably lower basis of rates than obtained generally throughout the Pacific northwest. The scale of rates proposed is still, for a considerable portion of the territory and traffic controlled by the suspended schedules, materially lower than that generally in effect.

We find that respondents have justified the schedules under suspension, so far as they apply to interstate and foreign commerce, except that no justification appears for the cancellation of carload commodity rates and no good reason has been shown why the relationships between classes recognized by us in *Portland Chamber of Commerce v. O. R. R. & N. Co.*, *supra*, should not apply to classes C, D, and E. Based on a first-class rate of 75 cents the rates for these classes should be as follows: Class C, 22.5 cents; class D, 19 cents; and class E, 15 cents.

An order will be entered requiring the cancellation of the suspended schedules and discontinuing this proceeding without prejudice to the establishment upon five days' notice of rates in conformity with the findings herein.

ATCHISON, *Commissioner*, concurring:

While concurring fully in the foregoing report and in the order, the following considerations, developed of record, seem to merit the attention of the respondents.

It is apparent that the cancellation of the less-than-carload commodity rates now in effect from Portland to Grays Harbor and Willapa Bay points, and the application in lieu thereof of the increased class rates, if followed by like cancellations in the intrastate rates from Seattle and Tacoma to the same points, will result in a loss of much, if not all, of the traffic which now moves under those commodity rates. The less-than-carload freight which moves over the respondents' lines at the 24-cent less-than-carload commodity rate represents a considerable proportion of all less-than-carload freight into Grays Harbor and Willapa Bay points. The car loading of less-than-carload shipments in this general territory, even including the traffic here under consideration, is light, and prohibitory rates on some traffic would aggravate this condition. The movement under consideration is also in the direction of the return of empty cars. Recognizing that a commodity rate applicable to less-than-carload traffic is a pronounced departure from the usual practice, and that under ordinary conditions class rates should properly apply; it may not be inappropriate to suggest that respondents consider further whether the 24-cent rate, increased to, say 30 cents, would not retain much of the traffic, and at the same time be sufficient to furnish some return in addition to the out-of-pocket cost of handling. This low rate, it should be remembered, was originally voluntarily established and has been maintained during a long period of years. Eventually, no doubt, these less-than-carload commodity rates should be canceled and class rates be made applicable; but violent dislocations of trade relationships may be avoided and opportunity be afforded for readjustments if this be accomplished somewhat gradually.

Whether tonnage now moving from Seattle, Tacoma, and other Washington points to Portland for points beyond, particularly in the Willamette Valley, would be affected to the detriment of the respondents' revenues may likewise properly be reexamined by respondents. The through rates to these points are not now before us, and whether the proposed scale will make the combinations on Portland result in rates which will be unreasonably high can not be here determined. So long as the present competitive situation exists, however, it may be advantageous to all concerned to maintain wide competition in this territory.

The foregoing suggestions are not made in criticism of respondents' proposals, which in the main have been found justified, but are submitted as deserving of consideration by the carriers when corrected schedules are filed in order that the maximum amount of traffic may move in the territory affected by the increased rates, and that trade relationships be preserved so far as can consistently be done. These suggestions, of course, relate only to the interstate traffic.

I am authorized to say that COMMISSIONERS POTTER, ESCH, LEWIS, and Cox concur in this expression.

64 I. C. C.

No. 11618.¹

E. I. DU PONT DE NEMOURS & COMPANY

v.

DIRECTOR GENERAL, AS AGENT, WEST JERSEY &
SEASHORE RAILROAD COMPANY, ET AL.

Submitted April 25, 1921. Decided October 6, 1921.

Rates charged on empty zinc-lined wooden boxes, in carloads, from Haskell, Parlin, and Carney's Point, N. J., to Hopewell, Va., via Potomac Yard, Va., found unreasonable and certain shipments found to have been misrouted. Reparation awarded.

C. M. Spargo and Harvey S. Farrow for complainant.

Edwin A. Lucas and Marion B. Pierce for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by defendants to the report proposed by the examiner.

Complainant, a corporation manufacturing explosives at Hopewell, Va., and Haskell, Parlin, and Carney's Point, N. J., alleges that the rates charged on numerous carloads of empty zinc-lined wooden boxes shipped from the three latter cities to Hopewell, during the period from August, 1917, to March, 1918, were unjust and unreasonable, and that certain of these shipments were misrouted. We are asked to award reparation. Rates will be stated in cents per 100 pounds.

The boxes had previously been used in transporting wet nitro-cellulose in the reverse direction. Each box weighed about 93 pounds, was valued at \$4.50, and was fitted with a lid constructed to hermetically seal the package. The movement in heavy volume began in 1915 and continued until the end of 1918.

The usual route of movement was through Norfolk, Va. Apparently because the customary service over that route was curtailed due to abnormal ice conditions then prevailing in Norfolk harbor, complainant routed all of these shipments via Potomac Yard, Va.,

¹ This report embraces also No. 11618 (Sub-No. 1), *Same v. Director General, as Agent*; No. 11618 (Sub-No. 2), *Same v. Director General, as Agent, and Raritan River Railroad Company*; No. 11618 (Sub-No. 3), *Same v. Director General, as Agent*; and No. 11618 (Sub-No. 4), *Same v. Director General, as Agent, Erie Railroad Company, et al.*

except 58 carloads from Carney's Point and 6 from Haskell. The excepted shipments from Carney's Point were routed "PRR * NYP&N * N&W"; from Haskell "Erie-PRR-NYP&N-N&W." These routings were correct for movements through Norfolk, via which gateway joint commodity rates of 17.8 cents, minimum 20,000 pounds, and 22.9 cents, minimum 18,000 pounds, applied from Carney's Point and Haskell, respectively. The shipments routed via Norfolk were diverted by the Pennsylvania over the Philadelphia, Baltimore & Washington to Potomac Yard; Washington Southern and Richmond, Fredericksburg & Potomac to Richmond, Va.; either the Atlantic Coast Line or the Seaboard Air Line to Petersburg, Va.; and the Norfolk & Western beyond. On January 23 and February 5, 1918, complainant authorized the Pennsylvania to so divert all shipments then en route. On February 9, 1918, these authorizations were withdrawn. The diversion of 54 of the 64 shipments alleged to have been misrouted was authorized. Of the remainder, 8 were diverted before the authority was granted, 1 each on August 20, 1917, and January 3, 1918, and 6 on January 10, 1918; and 2 were diverted after the authority was withdrawn, 1 each on February 10 and April 1, 1918. These 10 cars were accordingly misrouted.

Empty wooden boxes, zinc lined, were not specifically listed in the official and southern classifications, both of which rated lead-lined wooden boxes fourth class, minimum 20,000 pounds. Complainant's boxes were nested. The official classification provided a rating of fourth class, minimum 18,000 pounds, on wooden boxes nested, not otherwise specified. Combination fourth-class rates of 43.5 and 39.5 cents were charged from Carney's Point and Haskell, respectively. The rate charged from Parlin was 35.5 cents, minimum 18,000 pounds, composed of a fourth-class rate of 3.5 cents governed by official classification to South Amboy, N. J., a fifth-class rate of 22.5 cents governed by the southern classification to Petersburg, and a fourth-class rate of 9.5 cents beyond, governed by the official classification. Some of the shipments apparently were overcharged. In view of our finding herein concerning the reasonableness of the charges collected further discussion of the tariff situation is unnecessary.

Joint commodity rates through Norfolk of 22.9 cents, minimum 18,000 pounds, from Haskell, and 17.8 cents, minimum 20,000 pounds, from Parlin and Carney's Point, were established on May 1, 1915, at about the time when joint commodity rates were established on nitrocellulose in the reverse direction. In 1917 rates on the latter commodity were established via Potomac Yard, the same as those applicable via Norfolk, but similar action was not taken then with respect to empty boxes. Complainant did not request lower rates on the latter commodity via Potomac Yard until August, 1918.

As soon as conditions in Norfolk harbor improved complainant resumed shipping that way. Defendants established rates via Potomac Yard of 25.5 cents from Carney's Point on November 25, 1918; 25.5 cents from Parlin on December 29, 1918; and 33 cents from Haskell on January 18, 1919. These rates were the same as those via Norfolk and included the general increases following *The Fifteen Per Cent Case*, 45 I. C. C., 303, and general order No. 28 of the Director General of Railroads.

The distances to Hopewell through Norfolk are, from Haskell 467.9 miles, from Parlin 430 miles, and from Carney's Point 404 miles. Through Potomac Yard and over the Atlantic Coast Line they are 414.9, 377, and 351 miles, respectively. At the rates shown for the movements over the latter route the earnings from Haskell, Parlin, and Carney's Point were 17.14, 16.95, and 22.31 cents per car-mile, based on the minimum of 18,000 pounds, and 19.04, 18.83, and 24.79 mills per ton-mile, respectively. Over the Norfolk route at the joint commodity rates and minima contemporaneously in effect the corresponding earnings were 8.81, 8.28, and 8.81 cents per car-mile, and 9.79, 8.28, and 8.81 mills per ton-mile. If the same rates and minima had been applied via Potomac Yard as were in effect via Norfolk, the corresponding earnings would have been 9.93, 9.44, and 10.14 cents per car-mile and 11, 9.44, and 10.14 mills per ton-mile. Computed upon the basis of a 20,000-pound minimum, and the contemporaneous rate via Norfolk, the car-mile earnings on the shipments from Haskell would have been 11 cents.

The route through Norfolk consisted of a two-line haul from Carney's Point and Parlin and a three-line haul from Haskell, whereas the routing through Potomac Yard consisted of four-line and five-line hauls. Defendants contend that there was no necessity for another route carrying the same rate as the route through Norfolk.

We find that the rates charged were unreasonable to the extent that they exceeded 22.9 cents per 100 pounds from Haskell and 17.8 cents per 100 pounds from Parlin and Carney's Point, minimum weight 20,000 pounds; that complainant made the shipments as described and paid and bore the charges thereon; and that it has been damaged in the amount of the difference between the charges paid and those which would have accrued at the bases herein found reasonable. Complainant should comply with rule V of the Rules of Practice.

No. 11797.

ARMOUR & COMPANY

v.

OREGON SHORT LINE RAILROAD COMPANY ET AL.

Submitted April 23, 1921. Decided September 28, 1921.

Rate on fresh meat, in carloads, from Spokane, Wash., to Salt Lake City, Utah, found unreasonable. Reparation awarded.

Paul E. Blanchard for complainant.

H. A. Scandrett, J. M. Souby, and L. T. Wilcox for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by defendants to the report proposed by the examiner.

Complainant, a corporation operating a packing plant at Spokane, Wash., alleges that the rate of \$1.21 charged by defendants on three carloads of fresh meat shipped in August, 1917, from Spokane to Salt Lake City, Utah, was unjust and unreasonable to the extent that it exceeded \$1.05. We are asked to award reparation. Rates are stated in amounts per 100 pounds.

The shipments aggregated 66,413 pounds and moved over defendants' lines, 885 miles. Freight charges were collected in the sum of \$803.60, at the applicable third-class rate of \$1.21. There was contemporaneously in effect from Portland, Oreg., San Francisco, and Los Angeles, Calif., to Salt Lake City, a commodity rate of \$1.05 on fresh meat. On January 1, 1918, this rate was established from Spokane to Salt Lake City.

The same class rates applied and still apply from Spokane to Salt Lake City as from Portland, and on some commodities, such as canned goods and deciduous fruits, Spokane and Portland take the same rates to Salt Lake City. Defendants urge that the rates from Portland to Salt Lake City always have been subnormal, and that from August 1, 1917, to October 8, 1920, only six carloads of fresh meat, four carloads of packing-house products, and one carload of lard were shipped from Spokane to Salt Lake City.

Shipments originating at Portland or Spokane routed over defendants' lines move over the same tracks except for about 185 miles.

Prior to September, 1914, the distance from Spokane to Salt Lake City over the lines of the defendants was about 910 miles, or approximately 22 miles greater than from Portland. Since that date, when the so-called Spokane-Ayer cut-off was constructed, the distance between Spokane and Salt Lake City was reduced to slightly less than the distance between Portland and Salt Lake City. Defendants point out that the construction of this cut-off was very expensive and that considerably more tonnage moved from Portland than from Spokane, which they contend justified the maintenance of higher rates from Spokane. For some distance the movement from Portland is over heavy grades, while operating conditions from Spokane, since the construction of the cut-off, are more favorable than from Portland.

Defendants submitted exhibits showing rates contemporaneously in effect on fresh meats for comparable distances, which in some instances were higher than that assailed. Their witness admitted that "there might or might not have been shipments under those rates" to a majority of the destinations. Most of the rates shown are class rates.

Based on the actual loading of the six cars, the rate assailed yielded average car-mile earnings of 30.3 cents and ton-mile earnings of 27.4 mills. The commodity rate of \$1.05 subsequently established would have produced earnings of 26.3 cents and 23.8 mills, respectively.

We find that the rate assailed was unjust and unreasonable to the extent that it exceeded \$1.05 per 100 pounds; that complainant made the shipments as described and paid and bore the charges thereon; that it was damaged in the amount of the difference between the charges paid and those which would have accrued at the basis herein found reasonable; and that it is entitled to reparation in the sum of \$106.26, with interest.

An order awarding reparation will be entered.

64 I. C. C.

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No. 11798.

WENGER-ARMSTRONG PETROLEUM COMPANY

v.

DIRECTOR GENERAL, AS AGENT, MISSOURI, KANSAS &
TEXAS RAILWAY COMPANY OF TEXAS, ET AL.

Submitted April 21, 1921. Decided September 28, 1921.

Rate on fuel oil, in tank-car loads, from Burkburnett, Tex., to Export Oil Spur, La., for export, found not unreasonable, unduly prejudicial, or otherwise unlawful. Complaint dismissed.

E. N. Adams for complainant.

Robert Thompson, George Thompson, and L. M. Hogsett for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner. We have reached conclusions which differ in certain respects from those recommended by him.

Complainant, a corporation engaged in buying and selling petroleum and its products in the midcontinent and eastern fields, alleges that the rate charged by defendants for the transportation of fuel oil, in tank-car loads, from Burkburnett, Tex., to Export Oil Spur, La., for export, during February, March, and April, 1920, was unjust, unreasonable, unduly prejudicial, and in violation of the fourth section of the interstate commerce act. We are asked to award reparation. Rates will be stated in cents per 100 pounds.

The Burkburnett oil field is in north-central Texas. Export Oil Spur is a local point on the main line of the Texas & Pacific, about 12 miles west of New Orleans, La., and about 639 miles from Burkburnett.

The shipments were billed for export and were routed by the shipper over the Missouri, Kansas & Texas and the Texas & Pacific. Twenty-five cars moved via Shreveport, La., and 50 cars via Mineola, Tex.

Charges were collected at the applicable export rate of 24.5 cents in effect on both crude and refined oil. The same export rate applied from points of origin in Texas, including Burkburnett, to New

Orleans and other Louisiana ports, and to Galveston and other Texas ports. The claim for reparation is based upon a rate of 22 cents on domestic shipments of crude and fuel oil contemporaneously in effect from Burkburnett and other producing points in Texas, and from one or two points in southwestern Oklahoma in the vicinity of Burkburnett, to New Orleans and other Louisiana ports, but not including Export Oil Spur.

Complainant contends that the maintenance of a higher export rate to Export Oil Spur than the contemporaneous domestic rate of 22 cents to New Orleans, a farther distant point over the same line in the same direction, was in violation of the long-and-short-haul provision of the fourth section of the act.

In ascertaining whether the provisions of this section have been contravened rates of the same character must be compared. The export rate to Export Oil Spur did not exceed the export rate to New Orleans, the farther distant point. *Rates on Grain and Grain Products to Texarkana, Ark.*, 29 I. C. C., 35. Complainant compares the rate assailed with export rates on fuel and gas oil of 22 and 23 cents from farther distant points in Oklahoma, Arkansas, Kansas, and Missouri, and of 25 cents from Kansas City, Mo., to Louisiana and Texas ports, in effect during the period of movement here considered. Defendants contend that these rates are influenced by competition with pipe lines which extend from Oklahoma to Louisiana and Texas ports, whereas the pipe lines from the Texas fields extend only to the Texas ports.

The rate of 24.5 cents for the short-line distance of 639 miles from Burkburnett to Export Oil Spur yielded 7.6 mills per ton-mile, and, based upon the average loading of these shipments, 77,527 pounds, 29.7 cents per car-mile. Under the 22-cent rate sought the earnings would be 6.9 mills and 26.7 cents, respectively. Defendants show that the rate assailed compares favorably with the rates on crude oil from the midcontinent field approved by us in other cases, increased 4.5 cents under freight rate authority No. 96, issued subsequent to general order No. 28 of the Director General of Railroads.

Complainant contends that the export rate on fuel oil should have been less than on refined oil because fuel oil is a by-product, is of lower value, has greater weight per gallon, and consequently loads heavier than refined oil. Domestic rates on fuel oil are generally less than on refined oil, and in other cases we have fixed reasonable rates upon crude or fuel oils 5 cents lower than the contemporaneous rates on refined oils. But the contemporaneous domestic rate upon refined oil from Burkburnett to New Orleans was 34.5 cents, 12.5 cents higher than the domestic rate on crude oil from and to the same points and 10 cents higher than the assailed export

rate of 24.5 cents on crude oil. It does not appear that 24.5 cents was a maximum reasonable export rate on refined oil or that the export rate on crude oil should have been lower than 24.5 cents.

We find that the rate assailed was not unreasonable, unduly prejudicial, or otherwise unlawful.

The complaint will be dismissed.

No. 11910.

JAMES A. COAD

v.

CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAILWAY
COMPANY, DIRECTOR GENERAL, AS AGENT, ET AL.

PORTIONS OF FOURTH SECTION APPLICATION NO. 1862.

Submitted May 28, 1921. Decided September 28, 1921.

1. Rates on petroleum products, in carloads, from the midcontinent oil field in Kansas and Oklahoma to Alton, Iowa, Pipestone, Minn., and Beresford, S. Dak., found not unreasonable or otherwise unlawful. Complaint dismissed.
2. Fourth section relief denied.

McConkey & McConkey for complainant.

A. F. Cleveland and George C. Wright for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant is in the wholesale oil business and has distributing stations at Alton, Iowa, Beresford, S. Dak., and Pipestone, Minn. He alleges that the rates charged for the transportation of petroleum products from the midcontinent oil field in Kansas and Oklahoma to the points named were and are unreasonable and unjustly discriminatory, and, with respect to the shipments to Beresford and Pipestone, in violation of the long-and-short-haul provision of the fourth section of the interstate commerce act. Reasonable rates for the future and reparation are asked. Rates will be stated in cents per 100 pounds.

Alton is about 41 miles northeast of Sioux City, Iowa, and is the junction between the Chicago, St. Paul, Minneapolis & Omaha, hereinafter called the Omaha, and the Chicago & North Western. Pipestone is served by a branch of the Omaha and by three carriers not parties to this proceeding. It is 165 miles north of Sioux City by the Omaha and about 119 miles over the direct route. Beresford is on the Chicago & North Western, about 60 miles from Sioux City.

The following table shows the rates in effect August 25, 1920, the present rates, and those sought by complainant:

	To Alton.		To Pipestone.		To Beresford.	
	Rate in effect.	Rate sought.	Rate in effect.	Rate sought.	Rate in effect.	Rate sought.
Aug. 25, 1920:	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
From Kansas points.....	32.5	30	35.5	30.5	1 39.5	30.5
From Oklahoma points.....	34.5	30	35.5	30.5	1 42.5	30.5
Aug. 26, 1920:						
From Kansas points.....	44	40.5	48	41.5	53.5	41.5
From Oklahoma points.....	46.5	40.5	48	41.5	57.5	41.5

¹ Established Aug. 21, 1919, in compliance with order in *Codington County Oil Co. v. A., T. & S. F. Ry. Co.*, 53 I. C. C., 234.

Group rates apply on petroleum products from the midcontinent oil field to the general territory in which Alton and Pipestone are located. In *Midcontinent Oil Rates*, 36 I. C. C., 109, we fixed as reasonable maximum rates to Sioux City, 28 cents from the Oklahoma group and 25 cents from the Kansas group, and to St. Paul, 31 cents from both groups, and stated that defendants would be expected to align rates to intermediate or related points not named with those prescribed to particular points. Thereupon the carriers placed Pipestone and Sioux Falls, S. Dak., in the group which included St. Paul, while the rates to the group in which Alton is located were made 3 cents over Sioux City from the Kansas field and 2 cents over Sioux City from the Oklahoma field. Under the general rate increases since our decision the rates to Alton and Pipestone have been increased to the amounts above stated.

Rates from the midcontinent field to South Dakota points, including Beresford, were prescribed by us in *Codington County Oil Co. v. A., T. & S. F. Ry. Co.*, 53 I. C. C., 234. Prior to that decision the rates to Beresford were 40.5 cents from Kansas points and 43.5 cents from Oklahoma points. The basis there prescribed was the lowest combination of commodity rates to Sioux Falls, Sioux City, or Pipestone, as basing points, plus 75 per cent of the local fifth-class rate beyond. Compliance with our order resulted in the rates being reduced on August 21, 1919, to 39.5 cents and 42.5 cents, respectively, which rates, increased as authorized by us on July 29, 1920, are now in effect.

In support of the allegations that the rates are unreasonable and unjustly discriminatory against Beresford, complainant relies solely upon a comparison of rates and distances to points in group territory. Sioux Falls, one of the points shown as having a lower rate, was one of the base points adopted by us in prescribing rates to South Dakota. In attacking the rates to Alton and Pipestone, comparison

was made with rates and distances to a few points in groups having lower rates. No evidence was presented relative to conditions affecting transportation to any of the points compared.

Defendants state that the rates to Alton and Pipestone were and are those applicable to points in their respective groups, and were established to conform with our findings in *Midcontinent Oil Rates*, *supra*. The volume of the movement is relatively small to both places. Pipestone's location at the end of a branch line of the Omaha would justify even a higher rate, defendants claim, if it were not for the fact that it is intermediate to St. Paul over one of the routes. The rates assailed are shown to compare favorably with those applying on petroleum products to the same destinations from Casper, Wyo., and Whiting, Ind. Comparisons were also made with rates for hauls of comparable distances to points in other territories from Casper, Whiting, and other producing points. Although general operating conditions were said to be more favorable in those territories, the rates are higher than the rates assailed with but a single exception, where they are the same.

In any group arrangement it is usually possible to pick out particular points the rates to which, because of operating conditions, competition, or other reasons, do not appear properly aligned when considered solely from the standpoint of distance. The record is insufficient to warrant a finding of unreasonableness, especially as such a finding would necessitate disturbance of the present rate adjustment and result in a general reduction in rates over a large territory.

Those portions of fourth section application No. 1862 of W. H. Hosmer, agent, in which authority is sought to continue to charge for the transportation of gasoline and petroleum products from Oklahoma and Kansas points to Sioux Falls, S. Dak., rates which are lower than the rates contemporaneously maintained on like traffic to Beresford and Salem, S. Dak., and other intermediate points were heard with this complaint. Defendants offered no evidence in support thereof, and stated that there are now no fourth section departures in so far as points intermediate to Sioux Falls are concerned. The rate to Pipestone is not in violation of the fourth section, as alleged.

We find that the rates assailed were not and are not unreasonable or otherwise unlawful. The complaint will be dismissed. The portions of the fourth section application here considered will be denied.

No. 11896.

HOUSTON CHAMBER OF COMMERCE ET AL.

v.

DIRECTOR GENERAL, AS AGENT, HOUSTON & TEXAS
CENTRAL RAILROAD COMPANY, ET AL.

Submitted April 9, 1921. Decided September 28, 1921.

Charges on a carload of gas masks from Camp Logan, Tex., to Chicago, Ill.,
found unreasonable. Reparation awarded.

Huggins, Kayser & Liddell, J. A. Morgan, and H. C. Eargle for
complainants.

H. M. Garwood and H. C. Bush for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by defendants to the report proposed by the
examiner.

Complainants are Houston Chamber of Commerce, a corporation
engaged in promoting the commercial interests of Houston, Tex.,
and W. C. Munn Company, a corporation engaged in the purchase
and sale of merchandise at Houston. They allege that charges on a
carload shipment of damaged gas masks from Camp Logan, Tex.,
to Chicago, Ill., on April 17, 1919, based on the double first-class
rate of \$4.18 per 100 pounds, were unjust and unreasonable to the
extent that they exceeded charges which would have accrued at the
contemporaneous first-class rate. Reparation is asked on behalf of
Munn Company, hereinafter referred to as complainant.

The article shipped is described as the standard gas mask used
by the army during the war. It is a device consisting of a tin can
several inches long filled with layers of carbon and chemical salts
and perforated at the bottom, a rubberized cloth tube and covering
for the face, and a rubber mouthpiece. The wearer breathes through
the mouth, the air passing through the can and the tube. The masks
comprising complainant's shipment were made unfit for their pur-
pose by perforation of the tube; were purchased from the govern-
ment at 20 cents each, sold to a Chicago department store at 25
cents, and retailed in Chicago as souvenirs at 98 cents. Their original
cost was approximately \$1 per pound, or \$5 per mask.

The shipment weighed 24,000 pounds, and moved over the Houston & Texas Central, the Gulf, Colorado & Santa Fe, and the Atchison, Topeka & Santa Fe. Gas masks were not rated in the western classification, and by analogy defendants applied the double first-class rating and rate of \$4.18 applicable on life-saving apparatus, oxygen, less than carloads, there being no carload rating on that commodity, and accordingly collected charges aggregating \$1,003.20. The mask shipped is not an oxygen life-saving apparatus. Defendants' witness testified that double first-class rates have been paid on all of the government's shipments of gas masks, but that upon application made by the government it was the intention to publish in consolidated classification No. 2 ratings of first class, less than carloads, and third class, carloads, minimum 30,000 pounds. These ratings became effective on April 1, 1921.

Complainant referred to ratings on articles which it considered analogous to the component parts of these gas masks, including aluminum army canteens, rated first class in less than carloads, and third class, minimum 20,000 pounds, in carloads; also rubber cloth, in boxes or crates, dry goods, clothing, and notions, not otherwise indexed by name, in boxes, all rated first class in less than carloads; and it contends that the gas masks comprising this shipment were no more nor less than notions and should have been so classified.

Defendants contend that there should be no distinction made between new and damaged gas masks as to the rates applied, and stress the fact that complainant has not challenged the reasonableness of the double first-class rating on gas masks in perfect condition. Complainant's evidence can not fairly be construed as an admission that the rating or rates on uninjured gas masks are reasonable.

The shipment was sold f. o. b. Camp Logan, with the understanding between complainant and its vendee that the first-class rate was applicable, and complainant has borne the excess over the first-class rate.

We find that the charges collected were unreasonable to the extent that they exceeded those which would have accrued at the actual weight and the first-class rate of \$2.09 per 100 pounds; that complainant made the shipment as described, and bore that portion of the freight charges thereon in excess of what would have accrued at the rate of \$2.09; that it has been damaged thereby in the amount of that excess, and is entitled to reparation in the sum of \$501.60, with interest.

An order awarding reparation will be entered.

No. 11926.

CANNON MANUFACTURING COMPANY

v.

DIRECTOR GENERAL, AS AGENT, AND SOUTHERN
RAILWAY COMPANY.

Submitted May 21, 1921. Decided September 28, 1921.

Rates on sulphuric acid, in iron drums, in carloads, from Richmond, Va., to Kannapolis, N. C., found unreasonable. Reparation awarded.

A. S. Browne for complainant.

W. N. McGehee for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant is a corporation engaged in the manufacture of cotton goods at Kannapolis, N. C. By complaint seasonably filed it alleges that the rates charged on 19 carloads of sulphuric acid, in iron drums, from Richmond, Va., to Kannapolis, during the period from September 8, 1917, to June 29, 1918, were unjust, unreasonable, unduly prejudicial, and in violation of the long-and-short-haul provision of the fourth section of the interstate commerce act. Reparation only is sought. Rates will be stated in amounts per net ton.

Kannapolis is a local station on the main line of the Southern, 28 miles north of Charlotte, N. C., and is directly intermediate between Charlotte and Richmond. The shipments aggregated 853,351 pounds and moved over the Southern to Kannapolis via Danville, Va., 254 miles. Charges were collected at the applicable sixth-class rates of \$5 prior to June 25, 1918, and \$6.30 on and after that date.

Sulphuric acid is a low-grade commodity, its value being from \$20 to \$25 per net ton. It is used by cotton mills for bleaching purposes.

The class rates from Richmond to Kannapolis and Charlotte are the same. Prior to June 25, 1918, there was in force to Charlotte a commodity rate of \$2.50 on sulphuric acid in tank-car loads and a class rate of \$5 in iron drums. On December 12, 1918, there were established to Kannapolis commodity rates of \$3.10 in tank-car loads, the same as then in force to Charlotte, and \$3.90 in iron drums, 25 per cent higher than the rate in tank-car loads. Complainant contends that if commodity rates had been established to Kannapolis

prior to the increases authorized under general order No. 28 of the Director General of Railroads on June 25, 1918, the rates would have been \$2.50 in tank-car loads and \$3.10 in iron drums, and that it is entitled to reparation to the basis of \$3.10. It states that when the shipments began to move it requested the Southern to establish commodity rates, which the latter agreed to do.

At the hearing defendants expressed willingness to make refund to the basis of a rate of \$3.90. They contend that the conditions which led to the increases on June 25, 1918, existed prior to that time, and that \$3.90 was a reasonable rate during the entire period of movement. Upon defendants' application on the special docket refund of \$74.50 to the basis of the \$3.90 rate on three of the shipments which moved during November and December, 1917, and aggregated 135,427 pounds, was authorized by us on May 24, 1920, and has been paid.

Complainant compares the rates on sulphuric acid, in effect during 1917 and prior to June 25, 1918, from Richmond to Kannapolis, with rates for like distances between various southern points, as follows:

From—	To—	Short-line distance:	Rate (tank-car loads).	Rate (iron drums).
		<i>Miles.</i>		
Richmond, Va.....	Kannapolis, N. C.....	254	\$5.00	\$5.00
Do.....	Charlotte, N. C.....	282	2.50	3.04
Charlotte, N. C.....	Richmond, Va.....	282	2.43	3.04
Grasselli, Ala.....	Kannapolis, N. C.....	482	3.45	4.31
Do.....	Morgantown, N. C.....	453	4.00	4.00
Do.....	Greenville, N. C.....	347	2.68	3.35
Charlotte, N. C.....	Charleston, S. C.....	238	2.08	2.60
Savannah, Ga.....	Charlotte, N. C.....	264	2.29	2.86

The rate shown from Richmond to Kannapolis is a class rate; the others are commodity rates. It will be observed that the commodity rate to Charlotte, to which point Kannapolis is directly intermediate, is aligned with the other commodity rates shown.

Defendants state that the class and general commodity rates from Richmond to Kannapolis are included in a group adjustment from the Virginia cities to Carolina territory, which embraces several zones of destination. Kannapolis and Charlotte being in the same zone, defendants explain that the rates to the former are made the same as those to the latter and to other points within that zone, which comprises considerable territory traversed by the main line of the Southern, as well as points on its branch lines and also on its connections; that the average distance from the Virginia cities to Kannapolis is 284 miles, and to Charlotte 312 miles; and that the commodity rate of \$3.90 on sulphuric acid in iron drums from Richmond to Kannapolis was published on the usual basis.

Defendants compare the rate subsequently established from the Virginia cities to Kannapolis with rates between other points for similar distances. They show that the rate of \$3.90 to Kannapolis applied for distances ranging from 179 miles, from Lynchburg, Va., to 333 miles, from Portsmouth, Va. They instanced rates in effect prior to August 26, 1920, to Hopewell, Va., of \$4.40 from Charlotte, 289 miles, and \$3.70 from Selma, N. C., 147 miles. They also show by comparisons that the rate of \$3.90 on sulphuric acid in drums from the Virginia cities to Kannapolis is lower than the rates for similar distances on petroleum, petroleum products, fertilizer, syrup, and molasses, of which there is a considerable movement.

Defendants state that they use in southern territory the so-called unpublished scale of rates on sulphuric acid, based on rates prescribed in *International Agricultural Corporation v. L. & N. R. R. Co.*, 22 I. C. C., 488; that under the unpublished scale for the average distance of 312 miles from the Virginia cities to Charlotte the rate would be \$3.30 on acid in tank-car loads; that the rates on acid in drums are usually 25 per cent higher than in tank-car loads; and that the rate of \$3.30 plus 25 per cent would be \$4.125, or higher than the subsequently established rate of \$3.90. Complainant does not contend that the rate on acid in drums is improperly related to the rate on acid in tank cars, or that the \$3.90 rate on acid in drums is unreasonable for transportation subsequent to June 25, 1918.

The record does not sustain the allegation of undue prejudice, nor does there appear to have been a departure from the long-and-short-haul provision of the fourth section of the act.

We find that the rates assailed were unreasonable to the extent that they exceeded \$3.10 per net ton prior to June 25, 1918, and \$3.90 per net ton on and after that date; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged in the amount of the difference between the charges collected, less any refund received, and those which would have accrued at the rates herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with rule V of the Rules of Practice.

No. 12019.

AULT & WIBORG COMPANY

v.

DIRECTOR GENERAL, AS AGENT, CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, ET AL.

Submitted June 2, 1921. Decided September 28, 1921.

Rates on newsprint, book, and writing paper, in carloads, from Ladysmith, Wis., Kalamazoo, Mich., and Hamilton and Urbana, Ohio, to Vancouver, British Columbia, and Tacoma, Wash., found not unreasonable or otherwise unlawful. Complaint dismissed.

F. D. Reiley for complainant.

John F. Finerty and *Thomas M. Woodward* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation dealing in paper, ink, and other printing supplies, with main offices at Cincinnati, Ohio, alleges that the rates charged for the transportation of newsprint, writing, and book-print paper, in carloads, between December 5, 1918, and February 27, 1919, from Ladysmith, Wis., Kalamazoo, Mich., and Hamilton and Urbana, Ohio, to Vancouver, British Columbia, and Tacoma, Wash., for export to China, were unjust, unreasonable, and unduly prejudicial and discriminatory to the extent that they exceeded 90 cents. Reparation is sought. Complainant also prays that reasonable rates be prescribed for the future, but the current rates are not assailed. Rates are stated in amounts per 100 pounds.

The following shipments are specified in the complaint: Eight carloads of newsprint paper, containing not less than 60 per cent of ground wood, from Ladysmith to Vancouver, and seven carloads of the same commodity from Ladysmith to Tacoma, on which charges were collected at a rate of \$1.125; six carloads of book-print paper, not surface coated or ruled, from Kalamazoo to Vancouver, charged a rate of \$1.19; two carloads of book-print paper, surface coated, from Hamilton to Vancouver, on which a rate of \$1.25 was applied; and one carload of writing paper from Urbana to Vancouver, on which the rate charged was \$1.375. Prior to June 25, 1918, there

was an export rate of 65 cents on paper from Ladysmith and Chicago, Ill., to Vancouver, and rates from the other points of origin were made by adding to that rate the local class rates from those points to Chicago. On that date, under authority of general order No. 28 of the Director General of Railroads, the export rates were canceled, leaving in effect the above-named domestic commodity rates. Effective April 21, 1919, an export rate of 90 cents on paper was established from the points of origin.

In support of its allegation that the rates charged were unreasonable complainant relies solely upon the subsequent publication of the 90-cent rate.

Defendants show that the earnings per car and per ton-mile under the rates assailed were lower than those yielded by rates from and to the same points on seeds, axle grease, locomotive axles, building and roofing paper, tapioca flour, plaster board, glue, phosphate of lime, and other commodities. They compare the ton-mile earnings under the rates assailed with those under certain rates on newsprint paper in western territory based upon rates which have received our approval and to which the increases provided by general order No. 28 have been added, as follows:

From—	To—	Distance.	Rate.	Ton-mile earnings.
		<i>Miles.</i>		<i>Mills.</i>
Ladysmith, Wis.....	Vancouver, British Columbia.....	1,941	\$1.125	11.6
Do.....	Tacoma, Wash.....	1,934	1.125	11.6
Kalamazoo, Mich.....	Vancouver, British Columbia.....	2,384	1.19	9.9
Hamilton, Ohio.....	do.....	2,491	1.25	10
Urbana, Ohio.....	do.....	2,491	1.375	11
Chicago, Ill.....	Denver, Colo.....	1,018	1.66	12.8
Minnesota points.....	Wichita, Kans.....	866	2.46	10.6
International Falls, Minn.....	Muskogee, Okla.....	1,056	2.50	9.4

¹ *Colorado Mfrs. Assn. v. A., T. & S. F. Ry. Co.*, 29 I. C. C., 544.

² *Wichita Traffic Bureau v. A., T. & S. F. Ry. Co.*, 51 I. C. C., 505.

³ *Phoenix Printing Co. v. M., K. & T. Ry. Co.*, 31 I. C. C., 289.

The rate approved in *Phoenix Printing Co. v. A., T. & S. F. Ry. Co.*, *supra*, was 35 cents, which, increased by 25 per cent in accordance with general order No. 28, would result in a rate of 44 cents, instead of 50 cents as shown.

Testimony bearing on the reasons for the cancellation of export rates by general order No. 28 was also submitted. It is stated that the 65-cent rate on paper, originally published to meet water competition, was a depressed rate; that this competition was later eliminated by the effect of the world war on marine shipping; and that the necessity for additional operating revenue constrained the Director General to make substantial increases in abnormally low rates, among which were the export rates. The publication of the 90-cent

export rate in April, 1919, is said to have been due to water competition, which was beginning to assert itself again after the establishment of peace.

As to the 17 cars which moved to Vancouver, the Director General contends that we are without jurisdiction to award reparation on the present record, but in view of our conclusions it is unnecessary to discuss this question.

We find that the rates assailed were not unreasonable or otherwise unlawful. The complaint will be dismissed.

64 I. C. C.

No. 11954.

OTTO WEISS MILLING COMPANY

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY
COMPANY ET AL.

Submitted May 25, 1921. Decided September 28, 1921.

Rates on alfalfa meal, in carloads, from Winfield and Viola, Kans., to Cairo, Ill., milled in transit at Wichita, Kans., found unreasonable. Reparation awarded.

F. L. Partridge for complainant.

G. R. Piper for Atchison, Topeka & Santa Fe Railway Company.

C. N. Richards for Wabash Railway Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation engaged in the milling of alfalfa meal at Wichita, Kans., by complaint filed November 8, 1920, alleges that the rates charged for the transportation from Winfield and Viola, Kans., to Cairo, Ill., of certain shipments of alfalfa hay, milled in transit at Wichita and on July 17, 1912, reshipped as alfalfa meal, were unreasonable and in violation of the aggregate-of-intermediates provision of the fourth section of the interstate commerce act. Reparation only is asked. Undercharges on the shipments were paid May 28, 1918, and the claim was informally filed with us on November 19, 1917. Rates will be stated in cents per 100 pounds.

On July 17, 1912, complainant shipped from Wichita to Cairo one carload of meal, in bags, milled in transit at that point from alfalfa hay, originating in June, 1912, at Winfield and Viola. The hay moved over the Atchison, Topeka & Santa Fe, hereinafter called the Santa Fe, and the meal moved as routed by complainants, Santa Fe through Kansas City, Mo., to Lexington Junction, Mo., Wabash to East St. Louis, Ill., and Mobile & Ohio, beyond.

The transit tariff of the Santa Fe provided for the milling at Wichita of alfalfa hay and for the application of the meal rates from point of origin of the hay to destination of the manufactured product.

The western classification then in effect rated alfalfa meal, in bags, class B. The applicable rates were the joint class-B rates of 44 cents from Winfield and 45 cents from Viola. Allowing for certain shrinkage in milling, authorized by the transit tariff, the net weights of the shipments from Winfield and Viola were 30,419 and 9,581 pounds, respectively. Originally erroneous joint rates were applied, resulting in an undercharge of \$88.47; but on May 28, 1918, charges were collected on the applicable basis.

Complainant contends that the joint rates charged were unreasonable to the extent that they exceeded combinations of 22 cents from Winfield and 22.5 cents from Viola, composed of rates of 10 and 10.5 cents, minimum 36,000 pounds, applicable to the transportation of alfalfa meal from Winfield and Viola, respectively, to Kansas City, and a rate of 12 cents beyond. While a proportional rate of 12 cents applied in connection with the Wabash and the Mobile & Ohio from Kansas City to Cairo, it did not apply via Lexington Junction, nor from Kansas City in connection with the Santa Fe, so that the combinations claimed were not applicable. A rate of 8 cents, minimum 30,000 pounds, applied from Kansas City to St. Louis, Mo., by way of the Santa Fe to Lexington Junction and the Wabash beyond; and a seventh-class rate of 12.6 cents, governed by the Illinois classification, applied in connection with the Mobile & Ohio from St. Louis to Cairo. These rates, in conjunction with the rates cited of 10 and 10.5 cents to Kansas City, resulted in combinations of 30.6 cents from Winfield and 31.1 cents from Viola. The applicable rates were therefore in excess of the aggregates of the intermediate rates contemporaneously in effect over the route of movement. This adjustment was protected by appropriate applications on file with us but not heard with this case. The joint rates were canceled on March 31, 1919, and since that date the combination rates have been applicable.

We find that the rates assailed were unreasonable to the extent that they exceeded the aggregates of the intermediate rates based on Kansas City and St. Louis, Mo.; that the shipments were made as described; that complainant bore the charges thereon and was damaged in the amount of the difference between the charges paid and those which would have accrued at the rates herein found reasonable; and that it is entitled to reparation in the sum of \$54.07, with interest.

An order awarding reparation will be entered.

No. 11968.

WASHINGTON STEEL & ORDNANCE COMPANY

v.

DIRECTOR GENERAL, AS AGENT, BALTIMORE & OHIO
RAILROAD COMPANY, ET AL.

Submitted May 14, 1921. Decided September 28, 1921.

Rates on bituminous coal, in carloads, from New River district (group No. 1) of West Virginia to Uniontown, D. C., found not unreasonable or otherwise unlawful. Complaint dismissed.

Justin Morrill Chamberlin for complainant.

J. S. Patterson for Director General and Chesapeake & Ohio Railway Company.

Charles R. Webber for Director General and Baltimore & Ohio Railroad Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by defendants to the report proposed by the examiner. We have reached a conclusion differing from that recommended by him.

Complainant, a corporation, attacks as unreasonable and in violation of the long-and-short-haul provision of the fourth section of the interstate commerce act the applicable combination rates of \$2.80 and \$2.90 assessed on a number of carloads of bituminous coal transported during the months of August to November, 1918, inclusive, over the Chesapeake & Ohio from mines on its line in the New River district (group No. 1) of West Virginia to Potomac Yard, Va., and thence over the Baltimore & Ohio to complainant's plant at Uniontown, D. C., an average distance of about 337 miles. We are asked to award reparation to the basis of a joint rate of \$2.50 contemporaneously maintained by the above carriers from the New River district to Washington, D. C., and points on the Baltimore & Ohio directly intermediate thereto, to relieve complainant from the payment of certain outstanding undercharges, and to prescribe reasonable rates for the future. Rates are stated in amounts per gross ton and do not include the 1920 increases.

No evidence other than the above-mentioned joint rate was submitted by complainant. Uniontown is on a branch of the Baltimore & Ohio, which extends from Benning, D. C., to Shepherd, D. C., 6.6 miles. It is not directly intermediate to any point accorded the \$2.50 rate. The combination rates assailed were, therefore, not in violation of the fourth section.

The combinations were made up of rates of \$2.10, increased to \$2.20 on September 26, 1918, to Potomac Yard, and 70 cents beyond. The Chesapeake & Ohio tariff naming the rates to Potomac Yard also carried the same rate to Washington. This carrier treats both these stations as on its line. It operates into Potomac Yard under its own power, and serves Washington under an agreement with the Pennsylvania. Prior to August 17, 1918, it published no rates on coal to Washington for Baltimore & Ohio delivery, but on that date as a result of representations made by the Fuel Administration and the Department of the Interior, the joint rate of \$2.50 was established, and extended to intermediate stations to accord with the provisions of the fourth section of the act. Defendants contend that this was an emergency rate published at a time when shipments of coal which would ordinarily move to Washington from points on the Baltimore & Ohio were being diverted to eastern munition plants. They point out that the \$2.20 rate from the New River district to Potomac Yard, approximately 325 miles, was the same as that contemporaneously maintained from the Cumberland-Piedmont section on the Baltimore & Ohio to Washington, about 173 miles. As proof of the depressed character of this rate they cite *Bennett & Son v. C. & O. Ry. Co.*, 38 I. C. C., 310. Defendants show that two separate movements were required for the haul from Potomac Yard to Uniontown and that in addition a spotting service was performed at destination.

The normal and usual source of complainant's coal supply is the Cumberland-Piedmont section, from which the rate to Uniontown during the period of movement was \$2.20. These shipments were ordered by the Fuel Administration to complainant's plant, which was then engaged in the manufacture of projectiles for the government. The applicable rates of \$2.80 and \$2.90 yielded earnings of 7.42 mills and 7.69 mills, respectively, per net ton-mile, which were not excessive.

We find that the rates assailed were not, and are not, unreasonable or otherwise unlawful. The complaint will be dismissed.

No. 11989.

KENTUCKY WHOLESALE COMPANY, INCORPORATED,

v.

DIRECTOR GENERAL, AS AGENT.

Submitted May 28, 1921. Decided September 28, 1921.

Rate on a carload of canned kraut from Phelps, N. Y., to Pikeville, Ky., found not unreasonable. Shipment found to have been misrouted. Reparation awarded.

M. W. McGuinness for complainant.

John F. Finerty and *John C. Brooke* for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation engaged in the wholesale grocery business at Pikeville, Ky., alleges that the rate charged on a carload of canned kraut shipped September 24, 1918, from Phelps, N. Y., to Pikeville, was unreasonable and unduly prejudicial to the extent that it exceeded 35 cents. The prayer is for reparation only. Rates are stated in cents per 100 pounds.

Phelps is on the New York Central and Lehigh Valley. Pikeville is on the Big Sandy branch of the Chesapeake & Ohio, which connects with the main line at Catlettsburg, Ky. The shipment, weighing 62,000 pounds, was delivered to the New York Central at Phelps unrouted and moved over that line to Cleveland, Ohio, thence over the Cleveland, Cincinnati, Chicago & St. Louis to Cincinnati, Ohio, and the Chesapeake & Ohio beyond, 808 miles. Charges were collected in the sum of \$322.40 at the applicable combination fifth-class rate of 52 cents, made up of 27.5 cents to Catlettsburg, and 24.5 cents beyond.

At the time of movement there was in effect on shipments originating on the Lehigh Valley a fifth-class rate of 35 cents from Phelps to Pikeville. Complainant contends that the shipment should have been turned over to the Lehigh Valley by the New York Central or that the agent of the New York Central should have notified the shipper that a lower rate applied over the Lehigh Valley. There

is no physical connection between the rails of the New York Central and those of the Lehigh Valley at Phelps. There was a combination rate of 44 cents applicable on shipments originating on the New York Central, made up of the fifth-class rate of 9 cents to Geneva, N. Y., and 35 cents beyond over the Lehigh Valley and its connections, and this being the lowest available combination, it was defendant's duty to forward the shipment over this route. Various comparisons of rates were offered by both complainant and defendant.

We find that the rate over the route of movement was not unreasonable, but that the shipment was misrouted; that complainant made the shipment as described and paid and bore the charges thereon; that it was damaged by the misrouting in the amount of the difference between the charges paid and those which would have accrued had the shipment moved over the route over which the 44-cent rate was applicable; and that complainant is entitled to reparation in the sum of \$49.60, with interest.

An appropriate order will be entered.

64 I. C. C.

No. 12032.

LINK-BELT COMPANY ET AL.

v.

PITTSBURGH, CINCINNATI, CHICAGO & ST. LOUIS
RAILROAD COMPANY ET AL.

Submitted June 17, 1921. Decided September 28, 1921.

Ratings applicable on machine-finished steel roller chain, in bags, in official territory, found unreasonable. Reasonable ratings prescribed for the future.

John M. Sternhagen and Robbins, Townley & Wild for complainants and intervener.

James Stillwell for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainants, the Link-Belt Company and Diamond Chain & Manufacturing Company, corporations engaged in manufacturing chain at Indianapolis, Ind., allege that the ratings of one and one-half times first class, less than carload, and first class, carload, on machine-finished steel roller chain, hereinafter called roller chain, in bags, between points in official territory, are unjust and unreasonable to the extent that they exceed second class and fourth class, respectively, the ratings applicable when shipped in barrels or boxes. The Baldwin Chain & Manufacturing Company intervened on behalf of complainants.

For several years prior to September 15, 1916, the official classification ratings on iron and steel chain belting, including roller chain, in bags, were fourth class, less than carload, and fifth class, carload. On that date the less-than-carload rating on roller chain was increased to the present rating of second class, in barrels or boxes, no carload rating being provided. On December 30, 1919, the present carload rating of fourth class, in barrels or boxes, was established. No provision for shipment in bags has been made since September 15, 1916. It appears that contrary to the terms of the classification shipments in bags have been accepted, and that rule 5, section 3(c), of the classification has been applied. That rule provides in substance that when articles are transported in bags, the use of which is not authorized for that purpose, the ratings will be three classes higher

than when shipped in barrels or boxes. This results in ratings of one and one-half times first class, less than carloads, and first class, carloads, on roller chain in bags.

Roller chain, after being dipped in oil to prevent rusting, is coiled for shipment in 10-foot lengths, the coils being fastened, and averages about 200 pounds per bag.

Complainants and intervener are three of the four principal manufacturers and shippers of roller chain. This chain is used in the transmission of power on many varieties of machinery and vehicles, including bicycles and automobiles. The Link-Belt Company ships about 30,000,000 pounds of chain annually to various points in official territory, of which 1,500,000 pounds is roller chain, 3,500,000 pounds is steel chain other than machine finished, 22,000,000 pounds is malleable-iron belting or sprocket chain, and 3,000,000 pounds is gear or silent chain. Its shipments of roller chain are principally to Philadelphia, Pa.

The official classification ratings on steel chain other than machine finished, and on malleable-iron belting or sprocket chain, in barrels, boxes, or bags, are fourth class, less than carloads, and fifth class, carloads. The transportation characteristics of roller chain are substantially the same as those of steel chain, other than machine finished, and malleable-iron chain. Roller chain can not be damaged except through such rough treatment as would damage any of the several types of chain manufactured by complainants and interveners, as well as many other articles which are now accepted for transportation by defendants when packed in bags.

Defendants urge that roller chain is more valuable than other kinds of chain now shipped in bags, and should for that reason be packed in stronger containers. Complainants estimate that roller chain is worth from 15 to 50 cents per pound when machine finished, and averages about 25 cents per pound when not machine finished; and that the value of malleable-iron chain varies from 20 to 30 cents per pound. Value is only one of the many elements that enter into the classification of an article, and little weight can be given to the slight variations in value of the different kinds of chain in determining whether or not the shipment of roller chain should be permitted in bags.

We find that the failure of defendants to provide for the shipment of machine-finished steel roller chain, in bags, in less than carloads and in carloads, at the same ratings as apply on the same commodity when shipped in barrels or boxes, is unreasonable, and that reasonable ratings in official classification territory for this commodity, in bags, would be second class when in less than carloads and fourth class when in carloads.

An appropriate order will be entered.

No. 8418.¹

RAILROAD COMMISSION OF LOUISIANA

*v.*ARANSAS HARBOR TERMINAL RAILWAY COMPANY
ET AL.

Submitted June 18, 1921. Decided October 11, 1921.

Certain defendants authorized to reduce rates on gasoline from Somerset to San Antonio, Tex., and on gasoline and fuel oil from Grand Prairie to Dallas, Tex.

J. B. Payne and *L. M. Hogsett* for Texas & Pacific Railway Company and its receivers.

H. A. Briscoe for San Antonio Southern Railway Company.

U. S. Pawkett for Pioneer Oil & Refining Company.

T. B. Horton for State Refining Association.

REPORT OF THE COMMISSION ON FURTHER HEARING.

HALL, *Commissioner*:

These cases have been reopened to consider the reasonableness, relationship, and propriety of changes which certain defendants desire to make in the rates on gasoline and fuel oil, established in compliance with our previous orders herein. Rates will be stated in cents per 100 pounds.

GASOLINE FROM SOMERSET TO SAN ANTONIO, TEX.

By our order of January 22, 1918, in the *Shreveport Case* we prescribed a maximum rate of 28 cents on oil (refined petroleum), in carloads, which covered gasoline, class rates to apply where less. Under this order, the fifth-class rate from Somerset to San Antonio, 20.4 miles, as subsequently increased by the Director General and under Ex Parte 74 became 25 cents, the rate now in effect. The San Antonio Southern wishes to reduce this rate to 19 cents. Practically the entire output of gasoline of the Pioneer Oil & Refining Company's refinery at Somerset, amounting to four cars per day, is shipped to San Antonio. The refinery contemplates hauling the

¹ This report also embraces No. 3918, Railroad Commission of Louisiana *v.* St. Louis Southwestern Railway Company et al.; No. 8290, Railroad Commission of Louisiana *v.* St. Louis, San Francisco & Texas Railway Company et al.; and Investigation and Suspension Dockets No. 710, Eastern Texas Class Rates, No. 729, Class Rates to Shreveport, La.; and No. 11764, In the Matter of Intrastate Rates within the State of Texas.

gasoline to San Antonio by truck at an estimated cost of 0.9 cent per gallon, or building a pipe line of approximately 5 miles, at a cost not to exceed \$6,000, to Von Ormy, a station on the International & Great Northern. The rate from Von Ormy to San Antonio is 19 cents. It is also said that a competitive refinery is to be built at Von Ormy. The San Antonio Southern feels that it is absolutely necessary to establish the 19-cent rate in order to hold the business to its rails. Loss of it would seriously affect the revenues of the company. The Railroad Commission of Texas approves the proposed reduction.

We find that Shreveport will not be unduly prejudiced by establishment of a 19-cent rate applicable on interstate and intrastate traffic alike.

GASOLINE AND FUEL OIL FROM GRAND PRAIRIE TO DALLAS.

The State Refining Association operates a refinery at Grand Prairie, 12.2 miles west of Dallas. Its products are largely marketed in Dallas. The present rate on fuel oil from Grand Prairie to Dallas is 13 cents or \$96.20 per car of 74,000 pounds, and on gasoline 19 cents or \$125.40 per car of 66,000 pounds. The rate on gasoline was established in compliance with our order referred to; that on fuel oil in compliance with our order in *Intrastate Rates within the State of Texas*, 60 I. C. C., 421. At the present time the traffic is being hauled to Dallas by motor trucks, and the Texas & Pacific desires to establish rates of \$30 per car on fuel oil and \$40 per car on gasoline. The application has been approved by the Railroad Commission of Texas. It was testified that the refinery at Grand Prairie is in active competition with four refineries within the industrial district of Dallas which enjoy rates on gasoline ranging from \$11 to \$16 per car. The cost of hauling by trucks from Grand Prairie to Dallas over a concrete highway is said to be about \$33 a car and therefore if the Texas & Pacific is allowed to establish the desired rates the traffic will be handled by rail.

Unless the desired rates are established the traffic will continue to move by truck. No undue prejudice to Shreveport is shown. No good reason appears why the proposed reduced rates should not become effective, under the particular circumstance of the situation, provided they are made effective on interstate and intrastate traffic alike. We find that Shreveport will not be unduly prejudiced and that interstate commerce will not be unjustly discriminated against by the establishment of the proposed reduced rates.

Rates herein authorized may be made effective on five days' notice. An appropriate order will be entered in the *Shreveport Case* as to gasoline. No order is necessary in No. 11764 as to fuel oil.

No. 11595.
RUMBLE & WENSEL COMPANY
v.
DIRECTOR GENERAL, AS AGENT.

Submitted February 24, 1921. Decided October 11, 1921.

Combination rate on oats, in carloads, from Rosewood, La., to Natchez, Miss., found unreasonable to the extent that the factor to New Orleans exceeded 20 cents. Reparation awarded.

B. F. Martin for complainant.

L. M. Hogsett for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation engaged in the grocery and seed business at Natchez, Miss., alleges that the rate charged on a carload of seed oats shipped September 4, 1918, from Rosewood, La., to Natchez was unreasonable. The prayer is for reparation only. Rates will be stated in cents per 100 pounds.

The shipment weighed 64,000 pounds and moved as routed over the Texas & Pacific to New Orleans, La., 154.9 miles; and the Yazoo & Mississippi Valley to destination, 214 miles, a total of 368.9 miles. Charges in the sum of \$313.60 were collected at a rate of 49 cents. A combination rate of 51 cents, composed of 36 cents to New Orleans and 15 cents beyond, was applicable. The shipment was therefore undercharged. The 51-cent rate produced earnings of 88.46 cents per car-mile and 2.76 cents per ton-mile.

In *Natchez Chamber of Commerce v. L. & A. Ry. Co.*, 52 I. C. C., 105, we prescribed a distance scale of class rates for application between Natchez and points in western Louisiana, including Rosewood. In our supplemental report, 58 I. C. C., 610, 643, we found 55 per cent of class-B rates, plus an arbitrary of 2.5 cents for joint hauls, reasonable maximum rates for application on shipments of oats in that territory. The constructive distance from Rosewood to Natchez over the short route through Alexandria, Georgetown, and Vidalia, La., is 175 miles, allowing 20 miles for the Mississippi

River transfer. The commodity rate prescribed for a joint-line distance of 175 miles was 22.5 cents, and complainant contends that the rate applicable was unreasonable to the extent that it exceeded that amount.

The shipment moved as routed and complainant is entitled to reparation in no greater amount than the difference between the charges collected and those which would have accrued at a reasonable rate for the service performed. For the constructive distance from Rosewood to New Orleans, 174.9 miles, 55 per cent of the class-B rate prescribed is 20 cents. This rate as increased under the general increases of 1920 was not affected by *Natchez Chamber of Commerce v. L. & A. Ry. Co.*, 63 I. C. C., 288. The record contains no evidence concerning the New Orleans-Natchez factor of the applicable combination rate.

At the time of movement the Texas & Pacific maintained a rate of 31 cents on oats, in carloads, from Rosewood to Dallas, Tex., 366 miles. A 31-cent rate applied also from Texas common-point territory to Vicksburg, Miss., an average distance considerably in excess of that traversed by this shipment.

We find that the applicable combination rate was unreasonable to the extent that the factor to New Orleans exceeded 20 cents per 100 pounds; that the shipment was made as described; that complainant paid and bore the charges thereon; that it has been damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$89.60, with interest.

An appropriate order will be entered.

No. 12143.

GULF REFINING COMPANY OF LOUISIANA, IN BEHALF
OF UNION PETROLEUM COMPANY, PHILADELPHIA,
PA.,

v.

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY ET AL.

Submitted June 30, 1921. Decided October 11, 1921.

Rate on gasoline, in tank-car loads, from West Tulsa, Okla., to Gretna, La.,
found unreasonable. Reparation awarded.

C. B. Ellis for complainant.

No appearance for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation engaged in the production and sale of petroleum and its products, in behalf of the Union Petroleum Company of Philadelphia, Pa., also a corporation, alleges that the rate of 50 cents charged on six tank-car loads of gasoline which moved on September 12, 1915, from West Tulsa, Okla., to Avondale, La., for export, and were reforwarded to Gretna, La., for domestic use, was unreasonable and unduly prejudicial to the extent that it exceeded the subsequently established rate of 33 cents. Reparation only is asked. Rates are stated in cents per 100 pounds.

Defendants were not represented at the hearing. In their answers to the complaint the St. Louis-San Francisco, hereinafter called the Frisco, and Texas & Pacific interposed the statute of limitations as a bar to the granting of the relief prayed. The shipments were delivered at Gretna on October 5, 1915, freight charges were paid on October 23, 1915, and additional charges were collected September 17, 1917. The complaint was filed informally on the latter date. On June 5, 1920, complainant was notified by us that the complaint could not be disposed of informally, and formal complaint was filed on December 4, 1920, within the period of six months required by paragraph (g), rule III, of the Rules of Practice. This defense is without merit.

The shipments aggregated 335,696 pounds, and moved as routed by the shipper over the Frisco, to Hope, Ark., Louisiana & Arkansas to Alexandria, La., and Texas & Pacific to Gretna, 766 miles. Charges were collected at a combination rate of 50 cents, composed of commodity rates of 30 cents from West Tulsa to Alexandria and 20 cents beyond. At the time of movement the Texas & Pacific published no tariff provision permitting reconsignment on its line. The rate applicable was 60 cents, composed of commodity rates of 30 cents to Alexandria, 20 cents from Alexandria to Avondale, and 10 cents beyond. The shipments were therefore undercharged.

Complainant shows that a domestic commodity rate of 33 cents contemporaneously applied over the following routes from West Tulsa to Gretna: Frisco to Henryetta, Okla., Missouri, Oklahoma & Gulf to Denison, Tex., and Texas & Pacific beyond, 765 miles; Frisco to Neosho, Mo., Kansas City Southern to Shreveport, La., and Texas & Pacific beyond, 828 miles; and Frisco to Seligman, Mo., Missouri & North Arkansas to Helena, Ark., Yazoo & Mississippi Valley to New Orleans, La., and Texas & Pacific beyond, 889 miles. Complainant urges that transportation conditions over the route of movement were substantially similar to those over the routes compared. Over the route traversed by these shipments there was contemporaneously applicable an export rate of 20 cents; and on May 2, 1917, a domestic rate of 33 cents was established over that route from West Tulsa to Avondale and Gretna.

The rate applicable yielded, for the distance of 766 miles, 15.7 mills per ton-mile and 43.8 cents per car-mile. A 33-cent rate would have yielded 8.7 mills and 24.1 cents, respectively.

We find that the rate applicable from West Tulsa to Gretna was unreasonable to the extent that it exceeded 33 cents per 100 pounds; that the shipments were made as described; that the Union Petroleum Company of Philadelphia, Pa., paid and bore the charges thereon; that it was damaged thereby in the amount that the charges paid exceeded those which would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$570.68, with interest.

An order awarding reparation will be entered.

No. 11933.

HAZELHURST OIL MILL & FERTILIZER COMPANY

v.

DIRECTOR GENERAL, AS AGENT, ELGIN, JOLIET &
EASTERN RAILWAY COMPANY, ET AL.

Submitted June 6, 1921. Decided September 28, 1921.

Rate applicable on sulphate of ammonia, in carloads, from Gary, Ind., to Hazelhurst, Miss., found unreasonable. Waiver of undercharges authorized and complaint dismissed.

T. P. Goodwin for complainants.

No appearance for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

By DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation manufacturing and selling fertilizer at Hazelhurst, Miss., alleges that the rate charged by defendants on four carloads of sulphate of ammonia, shipped during February and March, 1920, from Gary, Ind., to Hazelhurst, was unreasonable, unjustly discriminatory, unduly prejudicial, and in violation of the aggregate-of-intermediate-rates provision of section 4 of the act. We are asked to award reparation and to establish a reasonable rate for the future. Rates will be stated in cents per 100 pounds, although some are published in amounts per net ton.

Hazelhurst is local to the Illinois Central. The shipments, aggregating 165,920 pounds, moved from Gary over the Elgin, Joliet & Eastern to a connection with the Illinois Central at or near Chicago, Ill., and over the latter line to destination, a total distance of 781 miles. Two of the shipments were made during federal control and two shortly after its termination. Freight charges of \$522.66 were collected at a rate of 31.5 cents. A joint sixth-class rate of 67.5 cents was applicable and undercharges of \$597.30 have been assessed against complainant but have not been collected.

Contemporaneously there were in effect lower combinations of 32 cents and 38.5 cents, the former composed of a joint commodity rate of 27.5 cents from Gary to Jackson, Miss., and a class-O distance rate of 4.5 cents beyond; and the latter composed of a sixth-class

rate of 7 cents from Gary to South Chicago and a commodity rate of 31.5 cents beyond.

Complainant compares the rate assailed with the contemporaneous rate of 27.5 cents from Gary to Jackson, a point intermediate to Hazelhurst and only 33.5 miles less distant. Effective February 29, 1920, that rate was increased to 27.75 cents. It further compares the rate assailed with contemporaneous rates of 31.5 cents from South Chicago to Hazelhurst, and 26.5 cents from Gary to New Orleans, La., Mobile, Ala., and Gulfport, Miss. Hazelhurst is intermediate to New Orleans.

Defendants admit that the rate charged should not have exceeded the rate of 31.5 cents from South Chicago, and express their willingness to adjust the charges to the basis of that rate and to publish rates from Gary no higher than from South Chicago.

The allegations of unjust discrimination and undue prejudice are not sustained.

We find that the applicable rate was unreasonable to the extent that it exceeded 31.5 cents per 100 pounds. As the charges collected were based on the rate herein found reasonable, the undercharges may be waived.

In connection with a general readjustment of rates intended to remove fourth section departures to points south of the Ohio River, defendants proposed a commodity rate of 35 cents from Gary to Hazelhurst, to become effective March 1, 1921. This rate with many others was suspended. *Rates to, from, and between Points South of Ohio River*, 64 I. C. C., 107. As the rate for the future is before us on the more extensive record in that proceeding, we refrain from passing thereon upon this record.

An order dismissing the complaint will be entered.

No. 11130.

INDIAN PACKING CORPORATION

v.

DIRECTOR GENERAL, AS AGENT, ANN ARBOR RAIL-
ROAD COMPANY, ET AL.

Submitted November 17, 1920. Decided September 1, 1921.

Official classification rating of second class on sliced dried beef, in glass, in less than carloads, found unreasonable and third-class rating prescribed. Reparation awarded.

Walter E. McCornack for complainant.

Parker McCollester for defendants.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS DANIELS, POTTER, AND ESCH.

BY DIVISION 2:

Consolidated freight classification No. 1, which became effective December 30, 1919, contains the following:

MEATS:	RATINGS. Official.
* * * * *	*
Cooked, Cured or Preserved, with or without vegetable ingredients,	
N. O. I. B. N.:	
In glass or earthenware packed in barrels or boxes, L. C. L-----	2
* * * * *	*
In metal cans in barrels or boxes, L. C. L-----	R26
* * * * *	*

Consolidated freight classification No. 2 continues these ratings in effect.

The complainant in this case is a corporation engaged in the meat-packing business with plants at Providence, R. I., and Green Bay, Wis. By its complaint filed January 2, 1920, three days after the effective date of consolidated classification No. 1, it alleges that the application of the second-class rating to less-than-carload shipments of sliced dried beef, in glass, in official territory is unreasonable and unduly prejudicial, to the undue preference and advantage of sliced dried beef in metal cans in barrels or boxes, and dried beef in bulk in barrels or boxes, which are rated R26, the rating next below third class, in less than carloads, in official territory. The

allegation of undue prejudice was withdrawn at the hearing. The complainant seeks reparation on shipments moving prior to the decision of this case. The issues here presented were made the subject of a proposed report by the examiner, to which exceptions were filed by the defendants. Statements hereinafter made with respect to classification ratings will refer to ratings in official territory on shipments in less than carloads except as otherwise indicated.

For many years prior to July 1, 1906, a first-class rating applied to sliced dried beef and numerous other descriptions of cured sliced meats, in glass, and to food products including fruits, vegetables, and fish, in glass. On that date the rating on cured sliced meats, in glass, was reduced to R26, the same as the existing rating on food products generally in tin, including canned meats, boxed, and also on dried meats in boxes, barrels, or casks, this reduction constituting the only exception to the former practice of applying the first-class rating to food products in glass. It was testified for the defendants that the reduction of the rating to R26 was made upon representations of the smaller shippers that it was necessary for them to have that rating in order to meet competition of the large packers who could ship sliced meat in glass in official territory at the fifth-class carload rating, apparently in mixed carloads with packing-house products. The ratings in effect July 1, 1906, continued for over 13 years, until the effective date of consolidated classification No. 1.

In *Consolidated Classification Case*, 54 I. C. C., 1, we recommended uniform rules, descriptions, packing specifications, and minimum and estimated weights for application in official, southern, and western territories. With regard to the ratings, however, we said:

We do not recommend any changed ratings except as the establishment of new items may directly effect changes, and such as may be a reasonably necessary part of the establishment of uniform descriptions, specifications, or minimum weights.

Prior to the *Consolidated Classification Case*, *supra*, there had been a growing sentiment among shippers that there was too great a spread between the ratings of first class on canned goods in glass and R26 on canned goods in tin, and in that proceeding the representatives of the Director General originally proposed to apply a rating of second class on the former and third class on the latter, and these ratings were recommended by our experts. Pursuant to our recommendations the Director General adopted the uniform descriptions of cooked, cured, or preserved meats, in consolidated classification No. 1, as above stated, and as the ratings formerly in effect on articles included within this new description, when packed in glass, ranged from first class to R26 it was necessary to apply a single rating in lieu thereof, this being an instance where

changes in ratings were necessitated by the new uniform description. The Director General adopted the second-class rating, involving both increases and reductions. As no changes in the ratings upon dried beef in bulk; food products, including meats, in tin; or food products in glass other than cooked, cured, or preserved meats, were "a reasonably necessary part of the establishment of uniform descriptions, specifications, or minimum weights," the former ratings thereon, namely, R26, R26, and first class, respectively, were not changed.

The following table shows the less-than-carload ratings on dried beef in the three classification territories prior to December 30, 1919, compared with the ratings in the proposed consolidated classification, those suggested by our experts in Appendix 6 to the report in the *Consolidated Classification Case, supra*, and those finally published in consolidated classification No. 1:

	Prior to December 30, 1919.			Proposed by carriers in docket 10204.			Suggested by our experts in docket 10204.			Effective under con- solidated classifica- tion No. 1.		
	In glass.	In tins.	In bulk in barrels	In glass.	In tins.	In bulk in barrels	In glass.	In tins.	In bulk in barrels	In glass.	In tins.	In bulk in barrels
Official.....	R26	R26	R26	2	3	3	2	3	3	2	R26	R26
Southern.....	2	3	B	2	3	B	2	3	B	2	3	B
Western.....	4	4	4	4	4	3	2	3	3	4	4	4

Dried beef was originally sold and shipped to the retailer only in bulk, but later in tins and in glass, and shipments in these various forms come in keen competition with each other. The demand for sliced dried beef in glass developed about the time of the Spanish-American war, and it has continued to move in considerable volume since, although not in as great volume as shipments in tin. Approximately 75 per cent of complainant's production of sliced dried beef in glass moves in official territory, and at least 90 per cent moves in less than carloads. Bulk dried beef is sliced by the retailer before selling to the consumer, and when so sliced is identical with the article packed in tin or glass. Shipments in bulk and in tin move in less than carloads at the R26 rating, while shipments in glass take second class. All three may move in straight carloads, or in mixed carloads with packing-house products, at the fifth-class carload rating. This fact is said to work to complainant's detriment because it does not ship dried beef in bulk and apparently is unable to ship any considerable quantity of its sliced dried beef in glass so as to avail itself of the carload ratings, while the large packers are in a position by the shipment of mixed carloads to avail themselves of the carload rating on less-than-carload quantities in bulk, in tin, or in glass.

In this connection it is also pointed out that dried beef in bulk requires refrigeration during the summer months, which involves a more expensive transportation service than is necessary for shipments of sliced beef in glass, which move in ordinary box cars.

Sliced dried beef in glass is packed and shipped in corrugated paper cartons meeting standard specifications, and the jars are separated by cardboard partitions so that each glass has its own small compartment. Tins of sliced dried beef on the other hand are packed and shipped in a fiber-board carton without partitions.

The following table shows some of the transportation characteristics of dried beef in glass in contrast with shipments in tin and in bulk, the unit of comparison for shipments in glass and in tin being a case of 48 jars or tins containing 2.5 ounces, net weight, of meat each, while a barrel is taken as the unit for shipments in bulk:

Shipment.	Gross weight.	Net weight of meat.	Weight per cubic foot.	Value of meat per pound.	Value per package.	Value per cubic foot as shipped.
	<i>Pounds.</i>	<i>Pounds.</i>	<i>Pounds.</i>	<i>Cents.</i>		
Sliced dried beef (in glass).....	28.5	7.5	27	90.6	\$6.80	\$6.41
Sliced dried beef (in tins).....	15	7.5	27.5	90.6	6.80	12.36
Dried beef (in bulk).....	216	195	26	39	76.05	9.20

The values of various cooked, cured, or preserved meats in glass which take the second-class rating are not shown of record, but it would appear that sliced dried beef is among the lower grades of such articles. The values of meat and meat products in tin, which take the R26 rating, are stated by the complainant to range from 17.7 to 98 cents per pound.

The susceptibility of an article to damage in transit is an important factor which enters into its classification rating. The natural presumption is that shipments in glass, owing to the fragile nature of the container, would be particularly subject to damage. It was testified, however, that complainant's product is packed in extra-heavy glass jars, which in turn are packed in the best obtainable cartons, thus reducing the possibility of damage in transit to a minimum. It is to be noted, too, that the liability of the inner container to breakage depends chiefly on the method of packing and the character of the outer container, which the carrier may control. When properly packed in an outer container of the right character, the character of the inner container may become relatively unimportant. Loss and damage claims filed by complainant during 1918 amounted to less than one-fiftieth of 1 per cent of the gross freight charges on sliced dried beef in glass as compared with about one-half of 1 per cent on the same commodity in tins. The complainant

had no figures showing separately the claims for loss and those for damage. In *Consolidated Classification Case, supra*, complainant testified that its claims on sliced dried beef in glass amounted to 2.5 per cent of the gross freight charges. In explanation of this wide discrepancy it states that the period used in computing the statistics in the latter case was short and that it was during a time of intensive loading, which entailed unusually heavy loss and damage. Defendants, on the other hand, seek to show that claims on shipments of canned goods in general in glass or earthenware are heavier than shipments in tins, and to support their contention they show that during three representative months in 1916, 1,738 claims on shipments in glass aggregating \$2,061.09 were paid by nine railroads in official classification territory, as opposed to 321 claims aggregating \$1,040.17 on shipments in tins. They offered no such data dealing particularly with sliced dried beef.

Complainant compared rates resulting from the application of the second-class rating with rates in effect prior to December 30, 1919, from Green Bay and Providence to 50 representative destinations from each, all taken from complainant's shipping records as points to which shipments are actually made. The average increase in rates to all these points was shown to be about 60 per cent.

Complainant also compared the revenue which would accrue to the carriers on a shipment of 25 cases of sliced dried beef in glass from Green Bay to each of 50 destinations at the R26 rating requested, with revenues which would result from similar shipments of 25 cases of the same commodity in tins. The gross weight of 25 cases in glass is 712.5 pounds, while that in tins is 375 pounds. As the net weight of the meat is 187.5 pounds in each instance, the weight of the packages containing the shipments in glass, and upon which the meat rate would have to be paid, is 525 pounds, while the weight of the packages containing the shipments in tin is 187.5 pounds. The value of the meat is the same in each instance. The carriers would receive a total of \$173.65 for transporting a typical shipment of 25 cases of beef in glass to each of the 50 points of destination referred to, as against \$91.39 for transportation to the same destinations of 25 cases in tins. In connection with these comparisons, however, it must be borne in mind that the gross weight of the shipments in glass is 189.5 per cent of the weight of the shipments in tin and that the cubic contents of the shipments in glass are 193.5 per cent of the cubic contents of the shipments in tin.

The fact that rates in official territory are usually lower than rates for similar distances in western territory is referred to by complainant and the rates on sliced dried beef in glass from Green Bay to five points in official territory are contrasted with rates on the same commodity from Green Bay to five points in western territory for

approximately similar distances. In each case the rate in official territory was practically twice or more than twice the rate in western territory. The rating in western territory is fourth class.

The complainant further referred to a few articles which, when in glass, are rated the same as when in tin or other packages, in official territory.

The defendants maintain that the second-class rating is reasonable for the group of meats of various grades and values which it covers, and contrast the first-class rating applicable on fish, fish products, fruits, and vegetables, in glass, with the rating assailed. They insist that it is impracticable to single out individual items for special treatment, and that a reduction in the rating on sliced dried beef in glass will inevitably be followed by demands for similar treatment of other food products in glass. This is no sufficient reason, however, for refusing to accord to sliced dried beef in glass the rating to which it is reasonably entitled. If other articles are entitled to similar treatment, they should have it.

Upon a careful consideration of the whole record we are of opinion and find that the rating assailed was, is, and for the future will be unreasonable to the extent that it exceeded third class. We further find that the complainant made shipments as described in the record and paid and bore the charges thereon; that it was damaged in the amount of the difference between the charges paid and those that would have accrued had the third-class rating herein found reasonable been in effect; and that it is entitled to reparation with interest. Complainant should comply with rule V of the Rules of Practice, and details of shipments made subsequent to the hearing may be included in the reparation statement filed thereunder if accompanied by appropriate proof in the form of an affidavit that the shipments were made and the freight charges thereon were paid and borne by the complainant. It is, of course, understood that if the defendants object to proof in the form of an affidavit they may request a further hearing with respect to the subject matter thereof.

An appropriate order will be entered.

DANIELS, Commissioner, dissenting:

The third-class rating on sliced dried beef, in glass, l. c. l., which is prescribed in the foregoing report, does not command my assent. My reasons are as follows: (1) The present rating of second class seems to me to be more in consonance with the considerations which determine classification generally; (2) more in consonance with the great majority of analogous ratings now found in consolidated

classification No. 2; and (3) the present second-class rating effects a consistent spread between carload and less-than-carload shipments which, under the proposed finding, is reduced to a spread between class 3 and a "split" class R26.

The glass container is recognized generally as employed for a choicer brand of product than the metal container. The glass container affords the opportunity for inspection which the metal container does not. The glass container is more fragile and normally subjects the carrier to greater liability and risk in transportation. An examination of the ratings upon various commodities in glass or earthenware, packed in barrels or boxes, together with ratings on the same commodities in metal cans, in barrels or boxes, discloses that, when packed in glass, ratings of first class or higher are almost six times as numerous as when packed in metal, and that second-class ratings on packages in metal are 10 times as numerous as second-class ratings on the same articles packed in glass. A few typical instances are afforded by the following table:

Classification item.	In metal.	In glass.
BUTTER:		
Sugar or Corn Syrup and Sugar combined, flavored or not flavored, l. c. l.....	3	2
Butter or Cheese Coloring:		
Dry, l. c. l.....	2	1
Liquid, l. c. l.....	2	1
Cider Syrup (Boiled Cider), l. c. l.....	3	1
COFFEE:		
Extract of (Condensed Coffee):		
Dry, l. c. l.....	3	1
Roasted, ground, l. c. l.....	R26	2
Roasted, other than ground, l. c. l.....	R26	2
EXTRACTS:		
Beef, l. c. l.....	2	1
Extracts, n. o. i. b. n.: Dry, l. c. l.....	1	1
Liquid, l. c. l.....	1	1
FISH:		
Other than Fresh:		
Shell Fish, Cooked, Pickled or Preserved, n. o. i. b. n., l. c. l.....	R26	1
Fish, other than Shell Fish:		
Cooked, Pickled or Preserved, Dried, Dry Salted or Smoked, l. c. l.....	R26	1
FOOD PREPARATIONS:		
Infants' or Invalids' Foods, cereal, l. c. l.....	2	1
Food, Prepared, n. o. i. b. n., l. c. l.....	2	1
FRUIT, OTHER THAN DRIED, EVAPORATED OR FRESH:		
Canned or Preserved in juice or syrup, or in liquid other than brine or alcoholic liquor, Fruit Butter, Crushed Fruit, Fruit Jam, Fruit Jelly or Fruit Pulp, l. c. l.	R26	1
Candied, Crystallized, Glacé or Stuffed, other than Citron, Lemon or Orange Peel:		
L. C. L.....	R25	1
C. L., min. wt. 30,000 lbs.....	3	3
Olives:		
L. C. L.....	3	1
C. L., min. wt. 36,000 lbs.....	5	5
FRUIT, DRIED OR EVAPORATED, OTHER THAN CANDIED, CRYSTALLIZED, GLACÉ OR STUFFED:		
Apricots, Blackberries, Cherries, Currants, Nectarines, Peaches, Pears, Plums, Prunes or Raisins:		
L. C. L.....	3	1
C. L., min. wt. 30,000 lbs.....	4	3
Dates:		
L. C. L.....	3	1
C. L., min. wt. 30,000 lbs.....	4	3
Figs:		
L. C. L.....	2	1
C. L., min. wt. 30,000 lbs.....	4	3

Classification item.	In metal.	In glass.
FRUIT, DRIED OR EVAPORATED, OTHER THAN CANDIED, CRYSTALLIZED, GLACÉD OR STUFFED—Continued.		
Edible Fruit, dried or evaporated, n. o. i. b. n., other than Candied, Glacéd or Stuffed:		
L. C. L.....	3	1
C. L., min. wt. 30,000 lbs.....	4	3
FRUIT JUICE, UNFERMENTED:		
Fruit Juice, artificial or natural, n. o. i. b. n.:		
L. C. L.....	2	1
C. L., min. wt. 30,000 lbs.....	4	3
Jams, Jellies or Preserves, edible, n. o. i. b. n., l. c. l.....	R26	1
Jelly, Corn Syrup, l. c. l.....	R26	1
Lard, n. o. i. b. n., l. c. l.....	R26	1
Lard Compounds or Substitutes, in solid form, n. o. i. b. n., l. c. l.....	R26	1
Milk, Condensed or Evaporated, liquid, l. c. l.....	2	1
Milk, Malted, l. c. l.....	2	1
Mince Meat, l. c. l.....	3	1
Mushrooms:		
Canned or Preserved in liquid, l. c. l.....	R26	2
Pickles, n. o. i. b. n., l. c. l.....	3	1
Pimentos:		
Canned or preserved in juice or syrup, l. c. l.....	3	1
Pickled in brine or vinegar, l. c. l.....	3	1
Sauces, Table, n. o. i. b. n., etc., l. c. l.....	3	1
Soups, including Broths or Chowders:		
L. C. L.....	R26	1
C. L., min. wt. 36,000 lbs.....	5	3
SYRUP:		
Flavoring or Fruit:		
L. C. L.....	2	1
C. L., min. wt. 36,000 lbs.....	4	3
VEGETABLES:		
Canned or Preserved, including Canned Corn, etc., l. c. l.....	R26	1
Dried or Evaporated Vegetables, n. o. i. b. n., l. c. l.....	3	1

I am not in agreement with the statement in the majority report that "when properly packed in an outer container of the right character, the character of the inner container may become relatively unimportant." I believe that the character of the inner package is always important and that a substantial outer package does not make the character of the inner package unimportant, and particularly when the inner package is of glass, where effective separation of the units in the inner packages is of essential importance to safe carriage with a minimum of breakage.

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No. 11649.

PROCTER & GAMBLE COMPANY

v.

ARKANSAS CENTRAL RAILROAD COMPANY ET AL.

Submitted March 17, 1921. Decided October 4, 1921.

Rates on vegetable oils, in carloads, from mill points in Oklahoma, Arkansas, and Louisiana to Dallas, Tex., found unreasonable. Scale of maximum reasonable rates prescribed for the future.

Hugo Ignatius for complainant.

Douglass Damson for interveners.

M. J. Dowlin, J. F. Garvin, and W. B. Plumb for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HAIL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner. We have reached conclusions differing from those recommended by him.

Complainant refines crude vegetable oils and manufactures lard substitutes at Dallas, Tex. It alleges that the rates on vegetable oils, including cottonseed, peanut, coconut, soya-bean, and palm-kernel oils, in carloads, from mill points in Oklahoma, Arkansas, and Louisiana, to Dallas, are unreasonable and unduly prejudicial. We are asked to prescribe reasonable rates for the future. Certain refiners of vegetable oils at Dallas and Sherman, Tex., intervened on behalf of complainant. Rates will be stated in cents per 100 pounds.

Oil mills are located at about 55 points in Oklahoma, 29 points in Arkansas, 24 points in Louisiana, and 189 points in Texas. In the latter state there are refineries at Dallas, Paris, Greenville, Sherman, Forney, and Fort Worth, not far distant from Dallas, and at Temple, Waco, Houston, and San Antonio, in the southern part of the state. Other important refining points which draw crude oil from the Oklahoma, Arkansas, and Louisiana mills are Kansas City, Kans., St. Louis, Mo., Memphis, Tenn., and New Orleans, La.

RATES FROM OKLAHOMA.

The present rates on cottonseed oil from mills throughout Oklahoma, with some exceptions, are 42.5 cents to Dallas and other
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northeastern Texas refining points, 50.5 cents to Houston and other southern Texas points, and 52.5 cents to Galveston, Tex. The rate of 42.5 cents to Dallas applies for distances ranging from 93 to 338 miles; and the group of origin is about 187 miles from north to south and 324 miles from east to west. The average distance from four Oklahoma mill points to Dallas is 224 miles, to Fort Worth 200 miles, to Greenville 202 miles, and to Sherman 157 miles; and from the four points Dallas is the farthest distant of the northeastern Texas group of refining points. Sherman is about 31 miles from the border of the group. The extent of the group of origin is out of proportion to the length of haul to Dallas and Sherman.

The rate to Dallas from Calvin and Wapanucka, near the center of Oklahoma, 182 and 129 miles respectively, is 27 cents, and from Boswell and four other points scattered throughout Oklahoma fifth-class rates ranging from 52.5 to 74.5 cents apply. The adjustment is haphazard and illogical.

The present rate of 42.5 cents from Cushing, Okla., to Dallas, 270 miles, is compared with the rate of 32.5 cents from Cushing to Kansas City, 280 miles, prescribed by us, as hereinafter explained. Complainant seeks a rate of 32.5 cents to Dallas; and defendants propose a rate of 43 cents, or 0.5 cent higher than the present rate. The present rate yields earnings of 94.4 cents per car-mile, based upon 60,000 pounds per tank car. The present rate of 42.5 cents from Durant, Okla., to Dallas, 94 miles, based on the same weight, yields earnings of \$2.71 per car-mile.

The parties are agreed that the situation should be corrected by the establishment of a distance scale of commodity rates from Oklahoma producing points to Dallas; but they disagree with respect to the measure, or level, of the scale. Complainant and defendants submit different scales for general application, not only from Oklahoma but also from Arkansas and Louisiana, to Dallas and other Texas refineries.

RATES FROM ARKANSAS.

The present rates on cottonseed oil from mill points in Arkansas to Dallas, and other refining points in Texas common-point territory generally, are based upon the New Orleans and Houston combinations, ranging from 84.5 to 97 cents, except that from Fort Smith a joint fifth-class rate of \$1.10 applies. The average distance from four mill points in Arkansas to Dallas is about 392 miles, to Sherman 307 miles, to Austin, Tex., 830 miles. The distance from Ashdown to Sherman is 169 miles, and the rate is 85.5 cents. From August 26 to 31, 1920, a rate of 63.5 cents from Ashdown applied not only to Sherman but to points as far distant as Houston, 323

miles. The group of destinations is too large in relation to the average distance from the four mill points to the nearest point in the group, and the grouping was unwarranted by any transportation or commercial conditions. The grouping was disrupted on August 31, 1920.

The \$1.10 rate from Fort Smith to Dallas, 270 miles, is compared with the rate of 32.5 cents from Fort Smith to Kansas City, 328 miles. Complainant suggests a rate of 31 cents from Fort Smith to Dallas, and defendants propose 40 cents, in lieu of the present rate of \$1.10. The rate from Ashdown to Dallas is 84.5 cents for 203 miles, and to Kansas City 42.5 cents for 468 miles, nearly double the rate for less than half the distance. The present rate from Little Rock to Chicago, Ill., 40.5 cents for 630 miles, is compared with the present rate of 88.5 cents to Dallas, 338 miles. Complainant suggests a rate of 34.5 cents from Little Rock to Dallas; and defendants propose 42.5 cents, which is higher than the rate to Chicago for nearly twice the distance.

The rate from Little Rock to Dallas yields earnings per car-mile of \$1.57. That suggested by complainant would yield 61 cents.

Other comparisons show that the rates assailed from Oklahoma and Arkansas points to Dallas are much higher than the rates for similar distances to Memphis, St. Louis, Chicago, and Kansas City.

RATES FROM LOUISIANA.

The present rates to Dallas from Louisiana mill points, except Shreveport and Ruston, are based upon combinations on New Orleans, Shreveport, La., Houston, and Beaumont, Tex., and apply to all refining points in Texas common-point territory. They range from 34 to 93 cents. Distance scales apply from Shreveport and Ruston to Texas points.

Prior to September 1, 1920, a blanket rate of 55.5 cents applied from all but seven of the Louisiana mill points. On that date the combinations became effective by means of an exception to the western classification withdrawing the application of the fifth-class rates. The effect of the change is apparent from the following illustration: The rate, subsequent to June 25, 1918, of 41 cents from Broussard was increased 35 per cent to 55.5 cents on August 26, 1920, and again increased 63 per cent to 90.5 cents on September 1, 1920. No explanation for the latter increase is made. The present rate is 74 cents, being the New Orleans combination. Defendants propose a rate of 44.5 cents for 413 miles, the distance from Broussard to Dallas. For the same distance complainant suggests a rate of 36.5 cents. The present rate from New Orleans to Dallas, 497 miles, is 50.5 cents, and defendants propose a rate of 48 cents for that distance.

The present rate from Alexandria to Dallas, 77.5 cents for 313 miles, is compared with that of 57.5 cents from Alexandria to Chicago for the much longer haul of 873 miles. Complainant suggests a rate of 33 cents. The present rate from Alexandria to Kansas City is 46 cents for 683 miles, and 46 cents to St. Louis, 599 miles.

Other comparisons show that the rates from Louisiana mill points to Dallas are much higher than other rates under which traffic moves from Louisiana to other refining points, and that the earnings under the present rates from Louisiana points to Dallas are excessive.

PROPOSED DISTANCE SCALES.

The scale of distance rates suggested by complainant for single-line application to Dallas from mill points in Oklahoma, Arkansas, and Louisiana commences with 8 cents for 10 miles or less, equivalent to \$48 per car, graded in blocks of 5 miles up to 20.5 cents for 100 miles, and in blocks of 10 miles up to 30.5 cents for 250 miles. For 250 miles and up to 600 miles these rates range from 30.5 to 42 cents, and are, with minor exceptions, the rates prescribed by us in *Oklahoma Cottonseed Crushers' Assn. v. M., K. & T. Ry. Co.*, 35 I. C. C., 94, and 39 I. C. C., 497, for single-line application for those distances from Oklahoma producing points to Kansas City, with the addition of the 25 per cent increase under general order No. 28 of the Director General of Railroads and the general increase of 35 per cent authorized by us on July 29, 1920. The minor exceptions to our Oklahoma-Kansas City scale are made in order to even the progressions which were slightly disarranged by the general increases. The basic rate of 30.5 cents for 250 miles was used in grading back the rates for shorter distances. For joint-line application complainant suggests arbitraries of 2.5 cents over the single-line scale for distances up to 120 miles, 1.5 cents for distances from 121 to 420 miles, and the same rates as under the single-line scale for distances over 420 miles. The joint-line arbitrary prescribed for our Oklahoma-Kansas City scale was 2 cents for all distances.

Complainant shows by numerous comparisons that the scale proposed would fairly align the rates to Dallas with the rates from the three states to other refining points. For example, the present rate from Tulsa, Okla., to Kansas City is 31 cents, 257 miles; and the rate under the suggested scale from Tulsa to Dallas would be 31.5 cents for 233 miles. These suggested rates would be slightly higher than rates in the southeast and east of the Mississippi River. Thus the present rate from Itta Bena, Miss., to New Orleans is 27 cents for 289 miles, and the suggested rate for a joint-line haul of the same distance is 33 cents.

Complainant and defendants agree that the transportation and traffic conditions with respect to vegetable oils, chiefly cottonseed oil,

from the three states to Dallas are fairly comparable and not substantially different from those surrounding the movement from the three states to Kansas City, St. Louis, Memphis, and New Orleans, with the exception that the oils do not move to Dallas or other Texas points under the present rates. Complainant contends that the lack of movement is due solely to the fact that the present rates are unreasonably high. Complainant and interveners desire the publication of their proposed scale in order that they may ship into Texas from the Oklahoma, Arkansas, and Louisiana mills. Defendants refer to our decisions as authority for the statement that the transportation conditions between the four southwestern states are not dissimilar, and they support complainant's position that one distance scale should properly be applied throughout this territory on vegetable oils. The parties are further agreed that the institution of a proper scale would remove the present disadvantage of Dallas refineries as compared with refineries at Kansas City and St. Louis.

Our Oklahoma-Kansas City scale was prescribed after careful and exhaustive investigation, and no good reason appears why the scale, as increased, should not be applied to Dallas. The line of the Missouri, Kansas & Texas from Dallas to Kansas City, 509 miles, runs about 104 miles in Texas, 245 in Oklahoma, and 160 in Kansas. Dallas is nearer to the southern boundary of Oklahoma than Kansas City is to the northern boundary, and the larger portion of that line is in Oklahoma. From Vinita, Okla., to Dallas, 320 miles over that line, about 221.8 miles are in Oklahoma, and from Colbert, Okla., to Kansas City, 403 miles over the same line, about 245 miles are in Oklahoma.

Defendants' proposed scale for single-line application commences with 15.5 cents for distances of 20 miles and under, equivalent to \$93 per car; grades in 10-mile blocks up to 25 cents for 100 miles; reaches 40 cents for distances of 280 miles and over 240 miles; and ends with 48 cents for 500 miles. Defendants' proposed rate of 40 cents is about 31 per cent higher than the basic rate of 30.5 cents suggested by complainant and prescribed by us in the Oklahoma-Kansas City scale for 250 miles.

Defendants' proposed scale is based upon the scale of rates on cottonseed oil which we at first prescribed in *Railroad Commission of Louisiana v. A. H. T. Ry. Co.*, 41 I. C. C., 83, but later rescinded in 48 I. C. C., 312, upon rehearing. Although the carriers published that Shreveport-Texas scale on interstate traffic they did not publish it on intrastate traffic, and no traffic has moved under the scale from Shreveport. Having withdrawn our finding with respect to that scale, we can not accept it now as a fair standard of, or basis of comparison with, the rates assailed.

Defendants state that the Shreveport-Texas scale is in effect in Oklahoma on intrastate traffic; and contend that it would be improper to establish a lower scale from Oklahoma into Texas than applies within Oklahoma on intrastate traffic. The Oklahoma commission has not approved the rates. Defendants state that the proposed scale should be applied also on Texas intrastate traffic. The issue of undue prejudice between state and interstate commerce is not raised by the complaint and can not be considered upon this record.

Comparisons are offered by defendants to show that the proposed scale is fairly in line with rates on other commodities, but these comparisons do not offset the showings made by complainant. Defendants have not justified a scale approximately 31 per cent higher than our Oklahoma-Kansas City scale, and the basis of their scale, yielding a minimum of \$93 per car for distances up to 20 miles, is too high.

CONCLUSIONS.

We find that the rates assailed from mill points in Oklahoma, Arkansas, and Louisiana (except Calvin, Okla.) to Dallas, are, and for the future will be, unjust and unreasonable to the extent that they exceed, or may exceed, the rates in cents per 100 pounds for single-line application under the following distance scale:

Haul.	Rate.	Haul.	Rate.
	<i>Cents.</i>		<i>Cents.</i>
100 miles and over 90 miles	20.5	350 miles and over 325 miles	34
120 miles and over 100 miles	22	375 miles and over 350 miles	35
140 miles and over 120 miles	23.5	400 miles and over 375 miles	36
160 miles and over 140 miles	25	425 miles and over 400 miles	36.5
180 miles and over 160 miles	26.5	450 miles and over 425 miles	37
200 miles and over 180 miles	28	475 miles and over 450 miles	38
225 miles and over 200 miles	29.5	500 miles and over 475 miles	39
250 miles and over 225 miles	30.5	525 miles and over 500 miles	40
275 miles and over 250 miles	31	550 miles and over 525 miles	40.5
300 miles and over 275 miles	32	575 miles and over 550 miles	41
325 miles and over 300 miles	33	600 miles and over 575 miles	42

Not exceeding 2.5 cents per 100 pounds for distances up to 200 miles, and 1.5 cents for distances up to 400 miles and over 200 miles, may be added to the rates on shipments transported over two or more lines not under the same control or management.

The above scale is practically the same as that prescribed for distances over 225 miles from Oklahoma points to Kansas City, plus the 25 per cent increase under general order No. 28 and the 35 per cent increase authorized by us on July 29, 1920.

An appropriate order will be entered.

No. 11976.

BEDFORD PULP & PAPER COMPANY

v.

DIRECTOR GENERAL, AS AGENT, AND CHESAPEAKE
& OHIO RAILWAY COMPANY.

Submitted June 15, 1921. Decided October 6, 1921.

Rate on imported wood pulp, in carloads, from Newport News to Big Island, Va., found not unreasonable or otherwise unlawful. Complaint dismissed.

Norman Fischer, Fischer & Fischer, Lyon & Lyon, and Alfred J. Kirsh for complainant.

W. S. Bronson and J. S. Patterson for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation, alleges that the class-C rate of \$3.50 per net ton charged on numerous carloads of imported wood pulp shipped from Newport News to Big Island, Va., 240 miles, during the period from August 25 to December 31, 1919, was unreasonable, unjustly discriminatory, and unduly prejudicial. We are asked to award reparation to the basis of the commodity rate of 12.5 cents per 100 pounds, or \$2.50 per net ton, established from and to these points on January 29, 1920. Rates will be stated in amounts per net ton.

Complainant's allegation of unreasonableness rests mainly upon the fact that the rate assailed represented an increase of approximately 119 per cent over the import rate of \$1.60 in effect prior to June 25, 1918; and further, that there was contemporaneously in effect from Big Island to Newport News a rate of \$3 on paper, of which wood pulp is the principal ingredient. It cites contemporaneous rates of \$3 and \$3.80 on wood pulp from Harper's Ferry and Parsons, W. Va., to Big Island, 192.5 and 272.8 miles, respectively, yielding earnings of 15.6 and 13.9 mills per ton-mile.

Defendants state that the import rate of \$1.60 was a very low rate established largely without reference to distance and cost of service in order to foster complainant's industry and to place it upon a parity with competing mills at Piedmont, W. Va., a point on the Baltimore

& Ohio 199 miles from Baltimore, Md.; that with the elimination of water competition and the need for increased revenues all import and export rates were canceled under authority of general order No. 28 of the Director General of Railroads; and that the subsequently established rate of \$2.50 was based upon the ton-mile yield of the rate of \$2.10 then in effect on this commodity from Baltimore to Piedmont, and represented a voluntary restoration of the former practice of constructing the rate from Newport News to Big Island with relation to the rate from Baltimore to Piedmont, although the rates on the Chesapeake & Ohio in Virginia are generally on a higher level than the Baltimore & Ohio rates in trunk line territory. Defendants further state that the contemporaneous interstate commodity rate of \$3 on paper from Big Island to Newport News was made to meet water competition from Baltimore, Philadelphia, Pa., and other cities which reach Newport News by vessel. They contend that this rate is not a fair measure of the rate to apply on wood pulp.

While the rate assailed represented a substantial increase over the import rate in effect prior to general order No. 28, the percentage of increase is not controlling if the resulting rate is not unreasonable, *Calumet & Arizona Mining Co. v. Director General*, 57 I. C. C., 332. Unreasonableness is not established by the existence of a lower rate over a route other than the route of movement and the subsequent reduction of the rate over the route of movement, *Fullerton-Powell Hardwood Lumber Co. v. G., C. & S. F. Ry. Co.*, 41 I. C. C., 625. The rate on paper from Big Island to Newport News is shown to be water compelled, and, therefore, not comparable. The rate assailed yielded ton-mile earnings of 14.6 mills, which compares favorably with the yield on the rates cited by complainant from Harper's Ferry and Parsons to Big Island. The evidence is insufficient to support a finding of undue prejudice and no evidence of unjust discrimination was submitted.

We find that the rate assailed was not unreasonable or otherwise unlawful. The complaint will be dismissed.

No. 12079.

H. P. JONES

v.

DIRECTOR GENERAL, AS AGENT, AND SOUTHERN
PACIFIC COMPANY.

Submitted June 7, 1921. Decided October 4, 1921.

Rate on feeder cattle, in carloads, from Lone Pine, Calif., to Brawley and Calipatria, Calif., during federal control, found not unreasonable. Complaint dismissed.

Alex. Gould for complainant.

Thomas M. Woodward for Director General.

Frank B. Austin for Southern Pacific Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant alleges that the rate charged on 37 carloads of feeder cattle shipped on April 25, 1918, from Lone Pine to Brawley and Calipatria, Calif., was unjust and unreasonable in violation of section 1 of the interstate commerce act and section 10 of the federal control act. Reparation is asked. Rates will be stated in amounts per 36-foot car. All points named are within the state of California.

Lone Pine is on the Owenyo branch of the Southern Pacific, 139.3 miles from Mojave. Brawley and Calipatria are in the Imperial Valley on a branch of the Southern Pacific extending from the main line at Niland, and are 444 and 434 miles, respectively, from Lone Pine. The shipments moved over that line during federal control. Charges were collected at the applicable combination rate of \$118, composed of \$71 to Saugus and \$47 beyond. On April 19, 1918, about a week prior to this movement, complainant requested a lower rate. On May 6, 1918, a rate of \$99 became effective. This was increased to \$114 on June 25, 1918.

In support of his contention that the rate charged was unreasonable complainant referred to rates contemporaneously in effect on feeder cattle between a number of points of origin and destination in California. The average car-mile earnings under those rates were 17.48 cents; for an average haul of 439 miles under the rate

charged they were 26.9 cents and, under the rate subsequently established, 22.6 cents. Defendants state that between the points cited there has been and still is a constant and important movement of feeder stock, and that the transportation conditions are not fairly comparable with those obtaining on the traffic here considered. The Owenyo branch of the Southern Pacific, which was constructed as an adjunct to the building of the Los Angeles aqueduct, traverses a desert country which is sparsely populated and produces little traffic other than potash, salts, and some live stock.

Defendants state that the \$99 rate was established because the live stock in the district where these shipments originated was in poor condition. About 35 head of cattle in this shipment died en route. Defendants contend that the prior rate was reasonable. Both factors of the combination charged were fixed by the railroad commission of California in two separate proceedings and represented substantial reductions from rates previously in effect.

We find that the rate assailed was not unreasonable. The complaint will be dismissed.

64 I. C. C.

No. 12153.

CHARLES BOLDT PAPER MILLS COMPANY

v.

DIRECTOR GENERAL, AS AGENT.

Submitted July 7, 1921. Decided October 4, 1921.

Rate on bituminous coal, in carloads, from Harveyton, Ky., to Red Bank, Ohio,
found unreasonable. Reparation awarded.

J. T. McLaughlin for complainant.

Royal McKenna and *Fred W. Heid* for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation engaged at Red Bank, Ohio, in the manufacture of corrugated boxes, box board, and similar products, alleges that the rate charged by defendant on nine carloads of bituminous coal, shipped between January 4 and February 7, 1918, from Harveyton, Ky., to Red Bank, was unreasonable and in violation of the fourth section of the interstate commerce act. The prayer is for reparation. Rates are stated in amounts per net ton.

Eight of the shipments aggregated 805,600 pounds and moved over the Louisville & Nashville and the Pittsburgh, Cincinnati, Chicago & St. Louis, hereinafter referred to as the Pan Handle, from Harveyton, a point on the former, 222 miles southeast of Cincinnati, to Red Bank. Red Bank is on the Pan Handle 7 miles north of that carrier's Cincinnati station. Since April 5, 1917, it has been included within the Cincinnati switching district except that Cincinnati rates on coal were not extended thereto until February 12, 1918. Charges amounting to \$745.18 were collected at the applicable rate of \$1.85, based on a rate of \$1.05 to Carrel street (Cincinnati) and 80 per cent of the sixth-class rate, or 80 cents, beyond.

The other shipment was billed to Eggleston avenue (Cincinnati) and weighed 106,500 pounds. Apparently it was reshipped to Red Bank but the circumstances are not clearly shown. Charges of

\$55.91 were properly assessed on this shipment at \$1.05 for the movement to Eggleston avenue. The local rate of 90 cents, resulting in charges of \$47.93, was collected for the movement beyond. Complainant denies that this car moved to Eggleston avenue and stated that if it had it would not have been included in this claim for reparation. The shipping papers show Eggleston avenue as the original destination with a subsequent movement to Red Bank.

Complainant contends that the combination rate to Red Bank was unreasonable because it exceeded the rate to other points in the Cincinnati switching district, specifically North Bend, on the Baltimore & Ohio, and Cleves and Woodlawn, on the Cleveland, Cincinnati, Chicago & St. Louis. It also attacks the rate on the ground that it exceeds the rate of \$1.40 then in effect from Harveyton to Clare, Milford, Loveland, and King's Mills, Ohio, stations on the Pan Handle ranging from 1.4 to 22.1 miles north of Red Bank, and to which Red Bank is intermediate. This departure from the provisions of the fourth section was unprotected.

It is urged on behalf of defendant that the rate to Cincinnati claimed as reasonable was in fact unduly low and depressed by competition with water-borne coal from the Pennsylvania and West Virginia fields; and that the circumstances affecting transportation after January 1, 1918, were substantially different from those prior thereto, due to the increases in wages effected by general order No. 27, which was made retroactive to that date.

Defendant's contention that the rate to Cincinnati was depressed, due to water competition, is in accord with evidence presented in *Bituminous Coal to C. F. A. Territory*, 46 I. C. C., 66, cited in the record, in which reference was made to the large volume of water-borne coal consumed at that point, and also finds support in the fact that the rates from Harveyton to points on the Louisville & Nashville intermediate to Cincinnati were materially higher than to Cincinnati. Thus, the rate to Ryland, Ky., 14 miles south of Cincinnati, was \$1.55, as compared with the rate of \$1.05 to Cincinnati. Similarly, the rate to Irvine, Ky., 99 miles north of Harveyton, exceeded the Cincinnati rate by 15 cents.

Defendant submitted numerous comparisons between the rates from Harveyton to Cincinnati and Red Bank and rates for comparable distances in central territory and in the south. Among them may be mentioned rates of \$1.45 from Dennison, Ohio, to Rushville, Ind., 239 miles; \$1.40 from Dennison to Fort Wayne, Ind., 234 miles; and \$1.45 from Centralia, Ill., to Lafayette, Ind., 178 miles. As stated, the rate from Harveyton to Clare, 230 miles, was \$1.40, and applied also to King's Mills, 251 miles.

The rate to Cincinnati yielded 4.73 mills per ton-mile, and 23.6 cents per car-mile based on an average load of 50 tons per car.

The earnings under the rate of \$1.85 to Red Bank were 8.08 mills per ton-mile and 40.4 cents per car-mile, as compared with 6.09 mills and 30.4 cents, respectively, to Clare, immediately north of Red Bank.

Giving due consideration to all the facts of record, it can not be said that a rate of \$1.05 was the reasonable maximum rate to have charged on shipments to Red Bank, and that any rate in excess of that amount was unreasonable and excessive. While the rate charged exceeded that in effect to other points within the Cincinnati switching district, there is no allegation of undue prejudice to complainant and no proof that damage resulted from the application of the lower rate elsewhere. But the evidence adduced fails to justify the maintenance of a higher rate to Red Bank than to points north thereof.

We find that the rate assailed was unreasonable to the extent that it exceeded \$1.40 per net ton; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rate found reasonable; and that it is entitled to reparation in the sum of \$181.26, with interest. Owing to the uncertainty of the record concerning the car originally consigned to Eggleston avenue, no finding is made with respect thereto.

An appropriate order will be entered.

No. 12152.

H. D. LEE FLOUR MILLS COMPANY ET AL.

v.

DIRECTOR GENERAL, AS AGENT.

Submitted July 2, 1921. Decided September 28, 1921.

Rates applicable on wheat from points in Kansas, milled at Salina, Kans., and thence forwarded as flour to Galveston, Tex., for export, found unreasonable to the extent that they exceeded the aggregates of the intermediate rates contemporaneously in effect from and to the same points. Rates on like traffic from points in Kansas to New Orleans, La., found not unreasonable or otherwise unlawful. Collection of certain undercharges waived and complaint dismissed.

E. H. Hogueland for complainants.

Alex. M. Bull for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainants are the H. D. Lee Flour Mills Company, the Weber Flour Mills Corporation, and the Lindsborg Milling & Elevator Company, corporations, engaged in milling grain at Salina and Lindsborg, Kans. They allege that the rates exacted by defendant on 74 carloads of flour milled at Salina and Lindsborg, from wheat originating during the period from June 25 to December 30, 1918, at certain named points in Kansas, and forwarded to New Orleans, La., and Galveston, Tex., for export, were unreasonable, unjustly discriminatory, unduly prejudicial, and in violation of the fourth section of the interstate commerce act in that they exceeded the aggregates of the intermediate rates contemporaneously in effect to and beyond Kansas City, Mo. Reparation only is asked. Rates will be stated in cents per 100 pounds.

The points of origin of the wheat are on the Union Pacific in the north-central and western parts of Kansas. The wheat moved over the Union Pacific to Salina, was there milled and thence forwarded as flour to New Orleans and Galveston for export, routed via Kansas City. Charges were collected at combination rates composed of the local rates to Kansas City, and an export rate beyond which was the same to both New Orleans and Galveston. Joint domestic commodity rates higher than the combinations were applicable to Galveston, and these rates, by provisions for absorption of wharfage, etc., included delivery to shipside. The shipments to Galveston were therefore undercharged; to New Orleans the applicable rates were

collected. No evidence was adduced with respect to the movement of, or the charges paid on, wheat milled at Lindsborg.

Prior to June 25, 1918, joint export commodity rates applied from stations on the Union Pacific, as well as from stations north and south thereof in Kansas, hereinafter referred to as cross-country points, on the Chicago, Rock Island & Pacific, the Missouri Pacific, and the Atchison, Topeka & Santa Fe, on wheat milled in transit on those roads, when the product was forwarded to New Orleans and Galveston for export. These rates generally were adjusted with relation to one another, competitive points being accorded the same rates over the different roads serving them, and rates from local stations being made with relation to the rates from competitive and cross-country points. On June 25, 1918, pursuant to general order No. 28 of the Director General of Railroads, the export rates were canceled, and the domestic rates, increased 25 per cent, subject to a maximum increase of 6 cents, became applicable on both domestic and export traffic. Counsel for defendant stated that prior to June 25 the carriers concerned were instructed to apply on this export traffic to both Galveston and New Orleans their lowest published domestic rates, as increased under general order No. 28, which were the New Orleans rates. Effective June 25 or shortly thereafter the carriers before named, other than the Union Pacific, published rates in accordance with those instructions. The result was that the previously existing relationship between rates from points on the Union Pacific and those on the other roads to New Orleans and Galveston was destroyed. Effective December 30, 1919, export rates were reestablished from stations on the Union Pacific and from cross-country points on the other roads to New Orleans and Galveston, which restored the relationship existing prior to June 25. Reparation is asked to the basis of these rates.

The following statement taken from complainants' exhibits illustrates the changes in the rates:

Haul.	Initial carrier.	Distance.	Rates.		
			June 24 1918.	June 25, 1918.	Decem- ber 30, 1919.
		<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
To Galveston from—					
Colby.....	Union Pacific.....	1,036	31.5	¹ 50.5	42.5
Do.....	Chicago, Rock Island & Pacific.....	1,135	31.5	40.5	42.5
Modoc.....	Missouri Pacific.....	1,103	29	40.5	40
Scott City.....	Atchison, Topeka & Santa Fe.....	954	29	40.5	40
Deerfield.....	do.....	967	29.5	40.5	40.5
To New Orleans from—					
Toulon.....	Union Pacific.....	1,290	30	² 41.5	41
Phillipsburg.....	Chicago, Rock Island & Pacific.....	1,324	30.5	39.5	41.5
Cowley.....	Missouri Pacific.....	1,310	30.5	39.5	41.5
Greensburg.....	Chicago, Rock Island & Pacific.....	1,234	28.5	39.5	39.5

¹ Rate collected, 43 cents, based on combination to and beyond Kansas City.

² Combination to and beyond Kansas City.

Complainants do not challenge the intrinsic reasonableness of the rates to Galveston or to New Orleans based upon the Kansas City combinations. They contend that the rates were relatively unreasonable and unduly prejudicial in that they did not conform to the adjustment maintained prior to June 25, 1918, and restored December 30, 1919. The record shows that the rates established December 30 were a part of a general readjustment of rates on grain from points not only in Kansas, but also in a number of other states, and involved increases as well as reductions.

Defendant in substance admits that the rates applicable on the shipments to Galveston were unreasonable to the extent that they exceeded the combination of rates to and beyond Kansas City, and expresses willingness to waive collection of the undercharges. He insists that the rates to both Galveston and New Orleans based on the Kansas City combinations were not unreasonable.

The evidence does not show that complainants were damaged by reason of the alleged undue prejudice, nor does it sustain the allegation of unjust discrimination.

We find that the applicable rates on the wheat milled at Salina, Kans., were not unreasonable or otherwise unlawful except that the rates on the shipments to Galveston, Tex., were unreasonable to the extent that they exceeded the aggregates of the intermediate rates contemporaneously maintained by defendants to and beyond Kansas City, Mo. Collection of undercharges to this basis should be waived.

The complaint will be dismissed.

64 I. C. C.

No. 11216.

COBBS & MITCHELL, INCORPORATED,

v.

DIRECTOR GENERAL, AS AGENT, AND GRAND RAPIDS
& INDIANA RAILWAY COMPANY.

Submitted March 18, 1921. Decided October 11, 1921.

Rate on logs, in carloads, from Boyne Falls to Cadillac, Mich., during federal control, found not unjust or unreasonable. Complaint dismissed.

Ernest L. Ewing for complainant.

E. M. Davis and *H. R. Griswold* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, DANIELS, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner, and the case was orally argued.

Complainant, a corporation manufacturing lumber and hardwood flooring at Cadillac, Mich., alleges that the rate of \$2.81 on logs, in carloads, moving from Boyne Falls to Cadillac, Mich., during the period from December 31, 1919, to February 29, 1920, inclusive, was unjust and unreasonable. We are asked to award reparation and also to prescribe a reasonable rate, but our jurisdiction in this case is confined to the period of federal control. Rates are stated in amounts per 1,000 feet.

Complainant owns timber lands and conducts logging operations in the northern part of the southern peninsula of Michigan. Its timber is located east and northeast of Boyne Falls, a station on the Grand Rapids & Indiana, hereinafter referred to as the G. R. & I., approximately 77 miles north of Cadillac. It owns and operates an unincorporated railroad, not a common carrier, extending from Boyne Falls into the timber. This has 25 miles of main line, 35 miles of branches and logging spurs, three locomotives, and other equipment. These facilities are utilized in assembling and transporting logs, in carloads, from logging camps in the woods to interchange tracks on complainant's property at Boyne Falls. There the G. R. & I. receives the loaded cars, hauls them to Cadillac and places them on interchange tracks within complainant's plant, where complainant main-

tains tracks and motive power for spotting loaded cars at its saw-mills and for performing intraplant switching.

On October 1, 1899, a rate of 75 cents on logs was established from Boyne Falls to Cadillac in accordance with a contract between complainant and the G. R. & I. On July 1, 1902, the rate was increased, by contract, to \$1, with a minimum of 4,000 feet. That minimum remained in effect until March 27, 1911, when it was increased to 5,000 feet on cars equipped with patent stakes, chains, and rail bunks. The rate of \$1, which yielded a minimum revenue of \$5 per car for a 77-mile haul, remained in effect until June 25, 1918, when it was increased to \$1.25 pursuant to general order No. 28 of the Director General of Railroads. On December 31, 1919, it was further increased by adding to the rate of \$1 in effect prior to June 25, 1918, the increase permitted on interstate shipments of lumber and forest products by our supplemental order of March 12, 1918, in *The Fifteen Per Cent Case*, 45 I. C. C., 303, and then adding the increase provided by general order No. 28. Our order provided, in part, that "commodity rates on lumber and forest products may be increased by one (1) cent per 100 pounds." Defendants converted the increase of 1 cent per 100 pounds into \$1.25 per 1,000 feet of hardwood and hemlock logs, based upon an estimated weight of 12,500 pounds per 1,000 feet. This was added to the rate of \$1 in effect on June 24, 1918, and the resulting sum of \$2.25 was increased by 25 per cent, or \$2.81. Complainant contends that the increase of December 31, 1919, was unauthorized, unjustified, and excessive; that our supplemental order in *The Fifteen Per Cent Case*, *supra*, did not contemplate an increase in log rates, especially when stated in amounts per 1,000 feet; that, even if such an increase were intended, the method used by the defendants in its effectuation was improper, in that the weight of logs transported bears no proper relationship to a rate stated per 1,000 feet; and that the estimated weight used in the conversion was not determined upon a sound basis.

Logs fall within the meaning of the generic term "forest products" and were therefore subject to the increase permitted by our supplemental order. No reason appears why the increase should be applied to log rates expressed in cents per 100 pounds and not when expressed in amounts per 1,000 feet. The general accuracy of the estimated weight per 1,000 feet is borne out by test of the weights of 109 cars reported by the Detroit & Mackinac; Boyne City, Gaylord & Alpena; and Michigan Central. This test developed that green hardwood logs averaged somewhat more and green hemlock logs somewhat less than defendants' estimate. Approximately 80 per cent of complainant's logs are hardwood, the remainder being hemlock.

During the period 1903 to 1919, inclusive, complainant's log shipments aggregated 87,660 cars containing 448,168,652 feet; from 1909 to 1919, inclusive, its shipments averaged 5,701 feet per car and were delivered to the G. R. & I. in lots of 18 to 20 cars per day. Its shipments probably will continue in like volume for at least eight years. The manufactured product has moved from Cadillac entirely over the G. R. & I. There have been no claims for loss or damage in connection with log shipments.

The rates assailed are compared with a number of rates published by the Chicago, Milwaukee & St. Paul for intrastate movements in Wisconsin and Michigan and from points in the northern peninsula of Michigan to points in Wisconsin, and by the Chicago, St. Paul, Minneapolis & Omaha from 10 selected points to Stillwater, Minn. These rates produce ton-mile earnings ranging from 2.06 to 5.5 mills and car-mile earnings ranging from 5.17 to 12.5 cents. They were not increased as a consequence of our orders in *The Fifteen Per Cent Case, supra*.

Complainant compared the rate to Cadillac with the intrastate distance rates between stations on the Mackinaw division of the Michigan Central and its branches north of Bay City. The rate of that carrier for distances of 75 to 105 miles, comparable with the distance from Boyne Falls to Cadillac, is \$2.51, minimum 2,500 feet per car. This would yield for the distance to Cadillac \$6.28 per car, 8.15 cents per car-mile, and 5.2 mills per ton-mile computed upon the estimated weight of 12,500 pounds per 1,000 feet.

Prior to April 15, 1918, a rate of \$2.25 applied on logs, in carloads, to Bay City, Mich., from Vanderbilt, Mich., and other points south thereof on the Mackinaw division of the Michigan Central taking the same rate; contemporaneously a rate of \$2.50 applied on logs, in carloads, to Bay City, from points on the same line north of Vanderbilt, including branch lines. On April 15, 1918, these rates were increased by \$1.25, resulting in rates of \$3.50 and \$3.75, respectively, following our supplemental order in *The Fifteen Per Cent Case, supra*. On June 25, 1918, pursuant to general order No. 28, the Vanderbilt rate was increased to \$4.37 and the rate north of Vanderbilt, to \$4.69. The logs moved by the Michigan Central from points north of Vanderbilt are produced in timber nearly adjacent to complainant's timber.

Complainant contends and defendants admit that the circumstances and conditions surrounding the establishment and maintenance of the Cadillac rate were essentially dissimilar from those under which the Bay City rates of the Michigan Central were evolved; and that no relationship existed between them.

The rate assailed yielded \$14.05 per car, 18.2 cents per car-mile, and 5.84 mills per ton-mile. We do not think the yield excessive for a single-line haul of 77 miles.

Under an alternative prayer complainant asks that, if the Cadillac rate for the line haul is not found unreasonable, reparation be awarded based upon an allowance for the service which its railroad performed in bringing the logs to Boyne Falls and in spotting cars on unloading tracks at Cadillac. At the argument that prayer was withdrawn.

We find that the rate assailed was not unjust or unreasonable during federal control. The complaint will be dismissed.

64 I. C. C.

No. 11862.

MISSOURI RATES AND CHARGES.

IN THE MATTER OF INTRASTATE RATES AND CHARGES
IN THE STATE OF MISSOURI.

Submitted June 20, 1921. Decided October 4, 1921.

Certain rates required by state authority to be applied intrastate in Missouri by respondent carriers found to result in undue prejudice to shippers of interstate traffic, in undue preference and advantage to shippers of intrastate traffic, and in unjust discrimination against interstate commerce.

C. S. Burg for Missouri, Kansas & Texas Railway Company; *M. G. Roberts* for St. Louis-San Francisco Railway Company; *T. J. Norton* for Atchison, Topeka & Santa Fe Railway Company; *S. H. Strawn* and *Frank H. Towner* for Chicago & Alton Railroad Company; *K. F. Burgess* for Chicago, Burlington & Quincy Railroad Company; *W. H. Jacobs* for Chicago Great Western Railway Company; *O. W. Dynes* for Chicago, Milwaukee & St. Paul Railway Company; *W. F. Dickinson* and *A. B. Enoch* for Chicago, Rock Island & Pacific Railway Company; *T. P. Coppage* for Kansas City, Clinton & Springfield Railway Company; *G. H. Muckley* for Kansas City Southern Railway Company; *Arthur Miller* for Kansas, Oklahoma & Gulf Railway Company; *E. A. Rozier* for Mississippi River & Bonne Terre Railway Company; *Shouse & Rowland* for Missouri & North Arkansas Railroad; *H. G. Herbel* for Missouri Pacific Railway Company; *J. B. Daniel* for Missouri Southern Railroad Company; *J. G. Trimble* for Quincy, Omaha & Kansas City Railroad Company; *Geo. Mahan* for St. Louis & Hannibal Railroad Company; *J. R. Turney* for St. Louis Southwestern Railway Company; and *N. S. Brown* for Wabash Railway Company.

S. C. Bates for various Missouri interests; *C. E. Warner* for Southwestern Interstate Coal Operators Association; *F. C. Taylor* for Missouri Portland Cement Company; *Frank Willeke* for Continental Portland Cement Company; and *E. H. Hogueland*, *C. E. Todd*, and *F. W. Peck* for Muncie Sand Company and Kaw River Sand & Material Company.

C. B. Bee and *S. C. Bates* for Public Service Commission of Missouri.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The issue in this proceeding, briefly stated, is whether the intrastate rates of the steam railroads in the state of Missouri on coal; coke; brick and articles basing thereon; sand; gravel; stone, except carved, etc.; crushed rock; chats; cinders; lime; cement; cement plaster; plaster and articles basing thereon; and petroleum oil and its products, unduly prejudice interstate commerce or persons or localities engaged therein.

Following our decision in *Ex Parte 74, Increased Rates 1920*, 58 I. C. C., 220, in which we authorized certain general increases in rates, fares, and charges, including an increase of 35 per cent in the interstate rates in the western group, of which Missouri is a part, the Public Service Commission of Missouri permitted like increases in the intrastate rates, fares, and charges, except in the rates on the above-named commodities. As to these, the Missouri commission limited the increases to 70 per cent over the rates in effect on June 24, 1918. It did not, however, require reductions to be made where the rates had been increased by more than 70 per cent on June 25, 1918, pursuant to general order No. 28 of the Director General of Railroads. The carriers filed with the Missouri commission a motion asking for the modification of its order. The proceeding was reopened on January 26, 1921, and further hearings held on March 1-2, but no modification has as yet been made.

Thereafter the steam railroads operating in Missouri filed with us a petition alleging that the refusal of the Missouri commission to permit the same increases in rates for intrastate transportation of these commodities as had been authorized in *Ex Parte 74*, results in undue and unreasonable advantage and preference to persons or localities in intrastate commerce, in undue, unreasonable, and unjust discrimination against interstate commerce, and deprives the carriers of the revenue which we found necessary to yield a fair return upon the aggregate value of the railway property in the western group held for and used in the service of transportation. In accordance with the provisions of section 13 of the interstate commerce act, we thereupon instituted this investigation.

General order No. 28 authorized an increase of 25 per cent in the rates on petroleum oil and its products and increases in stated amounts per ton or per 100 pounds in the rates on the other commodities involved herein. The rates on petroleum oil and its products were afterwards readjusted by substituting for the percentage increase a uniform increase of 4.5 cents per 100 pounds. The effect of this readjustment in the case of petroleum and its products and of the original increases in the case of the other com-

modities was to subject short-haul rates to increases of more than 25 per cent and long-haul rates to increases which were often less than 25 per cent.

The rates on these commodities within Missouri are generally on a distance basis. Where specific commodity rates exist, the distance rates are maxima. Most of the intrastate rates in Missouri in effect on June 24, 1918, were those which had been established by the Missouri commission. The carriers ask for the full 35 per cent increase on the Missouri intrastate distance rates as well as on specific rates.

The manner in which the distance rates on some of these commodities were affected by the order of the Missouri commission, following Ex Parte 74, is shown in part by the following:

Commodity.	No increases authorized up to—	Full 35 per cent increase reached at—
Coal, soft.....	25 miles	390 miles.
Coal, hard.....		220 miles.
Stone, crushed.....		80 miles.
Stone, rough.....	60 miles	300 miles.
Oil.....	40 miles	270 miles.
Lime.....		50 miles.
Cement.....		100 miles.
Brick.....	55 miles	250 miles.

Below is shown the approximate percentage which the intrastate tonnage of the commodities here considered is of the entire intrastate tonnage in Missouri of the carriers named:

St. Louis-San Francisco.....	29.3 per cent.
Atchison, Topeka & Santa Fe.....	78.62 per cent.
Missouri Pacific.....	50.9 per cent.
Wabash.....	31.3 per cent.
Chicago & Alton.....	62.32 per cent.
Missouri, Kansas & Texas.....	64.29 per cent.
Chicago, Burlington & Quincy.....	44.01 per cent.
Kansas City Southern.....	80.1 per cent.

The monthly loss of revenue sustained by these respondents because of their inability to increase the intrastate rates 35 per cent in all instances is estimated to be approximately \$47,741.32.

From the traffic standpoint, soft coal is probably the most important of the commodities. Little coal moves on the distance rates, as specific group rates are published which in general are lower. The coal-producing territory is mainly west of the center of the state and along the western border. The large consuming points in eastern Missouri are much nearer the Illinois mines, and for this reason Missouri coal finds its principal markets in the western part of the state, particularly at Kansas City and St. Joseph. It is sold in

competition with the Illinois coal and also with coal from Iowa and that mined in Kansas at points near the Missouri mines.

The disruption of former relationships is illustrated by the following examples:

Liberal, Mo., is served by the St. Louis-San Francisco, hereinafter termed the Frisco, and by the Missouri Pacific. On August 25, 1920, both roads maintained a rate of \$1.40 per ton to Kansas City, Mo., 125 miles via the interstate route of the Frisco and 130 miles via the intrastate route of the Missouri Pacific. The rate via the Frisco was increased to \$1.89 under Ex Parte 74. The intrastate rate was limited to \$1.53 by the order of the Missouri commission.

Rich Hill, Mo., is served by the Frisco and the Missouri Pacific. Hume, Mo., farther west, is on the same branch of the Frisco, as well as on the Kansas City Southern. Between these two points is Sprague, Mo., which is served only by the Frisco. The Frisco route is interstate, and the Kansas City Southern and the Missouri Pacific routes are intrastate, to Kansas City, Mo. Prior to the 1920 increases, these three points had equal rates to Kansas City, Mo. The present rates, stated in cents per ton, are shown below.

From—	Route.	Distance.	Rate Aug. 25, 1920.	Present rate.
		<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>
Rich Hill.....	Missouri Pacific intrastate.....	85	120	120
Do.....	Frisco interstate.....	98	120	162
Sprague.....	do.....	92	120	162
Hume.....	Kansas City Southern intrastate..	81	120	120
Do.....	Frisco interstate.....	85	120	162

The Kansas City, Mo., switching district extends into Kansas, and there are many large consumers of coal in Kansas City, Kans. On August 25, 1920, the rates on coal from Missouri mines were generally the same to Kansas City, Mo., as to Kansas City, Kans. As a result of the different increases, there is now a wide spread between the rates to these points. On coal from Huntsville, Mo., on the Wabash, the rate to Kansas City, Mo., is \$1.02, whereas the rate to Kansas City, Kans., or any other Kansas City switching-district point in Kansas is \$1.35, giving the consumer of coal in Kansas City, Mo., an advantage of 33 cents over the consumer across the state line. From one mine 28,820 tons of coal were shipped from Huntsville to Kansas City, Mo., during the period September, 1920, to January, 1921. On these shipments the freight charges were \$9,520.50 less than would have accrued if the rate had been increased the full 35 per cent.

Coal operators in Ray, Clay, and Lafayette counties in Missouri, point out that the intrastate coal rates have been increased 100 per cent and more over the rates in effect on June 24, 1918, against a 61

per cent increase in the interstate rates from Illinois, whence their principal competition comes. Their position is that short-haul coal traffic is charged with more than its proportion of the transportation burden. The rate to Kansas City, Mo., from near-by Missouri mines was 40 cents a ton prior to general order No. 28. That order increased the rate to 80 cents, and no further increases were authorized by the Missouri commission. An increase of 35 per cent would make the rate 68 cents higher than that in effect June 24, 1918, whereas since that date the rates from the three Illinois groups to Kansas City have been increased by amounts ranging from 98.5 cents to \$1.40 and averaging \$1.215. The record shows that coal can be produced at a much lower cost in Illinois than in Missouri, due to less water, thicker veins, etc., in the Illinois mines.

St. Joseph and Kansas City, Mo., are the largest receivers of coal from Missouri and Iowa mines located on the Chicago, Burlington & Quincy. The advantage the Missouri mines have over the Iowa mines may be illustrated by the following table, an excerpt from exhibits submitted by that carrier:

Haul.	Distance.	Aug. 25, 1920, rate. ¹	Sept. 20, 1920, rate. ¹	Increase per ton.	Per cent of increase.
To Kansas City, Mo., from—	<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Per cent.</i>
Mendota, Mo.....	181	110	127.5	17.5	16
Bevier, Mo.....	151	100	102	2	2
Brazil, Iowa.....	208	110	148.5	38.5	35
Centerville, Iowa.....	202	110	148.5	38.5	35
Cincinnati, Iowa.....	185	110	148.5	38.5	35
Exline, Iowa.....	190	110	148.5	38.5	35
To St. Joseph, Mo., from—					
Bevier, Mo.....	131	100	102	2	2
Macon, Mo.....	136	100	102	2	2
Mendota, Mo.....	161	110	119	9	8
Novinger, Mo.....	146	100	102	2	2
Brazil, Iowa.....	162	110	148.5	38.5	35
Centerville, Iowa.....	168	110	148.5	38.5	35
Cincinnati, Iowa.....	166	110	148.5	38.5	35
Exline, Iowa.....	170	110	148.5	38.5	35

¹ In cents per ton.

During August, 1920, approximately 7,685 tons of coal moved from the Iowa points named to Kansas City and St. Joseph, and approximately 10,296 tons from the Missouri points.

Similar disparities exist between the rates from Kansas and Missouri mines, many of which were formerly grouped under the same rates. These disparities tend to curtail the movement from interstate points and to deprive the interstate routes of participation in competitive traffic.

The Missouri commission prescribed rates on brick which were lower than the rates in Iowa, Kansas, Illinois, Arkansas, or Oklahoma. Upon this level of rates the increases under general order No. 28 were made. The rate from Fort Scott, Kans., to Springfield, Mo., 107 miles, is 9.5 cents. For the same distance under the Missouri intra-

state scale the rate is 7 cents. If the full 35 per cent increase were added to the rate in effect August 25, 1920, it would be 8 cents for that distance.

The largest lime-producing point on the Frisco in Missouri is Ash Grove. Lime is also manufactured in northeastern Arkansas. The following comparison of rates, in cents per 100 pounds, is one of several submitted by the carriers:

From—	To—	Distance.	Rate.
		<i>Miles.</i>	<i>Cents.</i>
Avoca, Ark.....	Exeter, Mo.....	27	10
Garfield, Ark.....	Butterfield, Mo.....	25	10
Johnsons, Ark.....	Wayne, Mo.....	26	10
Ash Grove, Mo.....	Lockwood, Mo.....	25	18.5 19

¹ Present rate on Missouri state traffic.

² Rate based 35 per cent over Aug. 31, 1920, rate.

The Missouri intrastate rates on petroleum oil and its products, effective on the dates and for the distances indicated, and the proposed increased rates, are as follows:

Haul.	June 24, 1918.	Aug. 25, 1920.	Sept. 1, 1920.	Proposed rates.	Haul.	June 24, 1918.	Aug. 25, 1920.	Sept. 1, 1920.	Proposed rates.
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>		<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
5 miles.....	4	8.5	8.5	11.5	150 miles.....	12.2	16.5	20.5	22.5
25 miles.....	6	10.5	10.5	14	175 miles.....	13.1	17.5	22.5	23.5
50 miles.....	7.3	12	12.5	16	200 miles.....	14.1	18.5	24	25
75 miles.....	8.5	13	14.5	17.5	250 miles.....	16.1	20.5	27.5	27.5
100 miles.....	9.8	14.5	16.5	19.5	280 miles.....	17.3	22	29.5	29.5
125 miles.....	11	15.5	18.5	21					

The present intrastate rates are lower than apply on petroleum within adjoining states, except Kansas. So far as the record shows, the Missouri rates are the same on crude and heavy oils as on refined oils. No specific evidence was offered in opposition to the proposed increased rates, except to those on refined oils from Joplin, Mo., to certain destinations in southwestern Missouri. The rates from Joplin to various intrastate destinations in effect during federal control, which were based on the scale shown in the table above as in effect August 25, 1920, were found not unreasonable in *Wilhoit Oil Company v. Director General*, 62 I. C. C., 313. Our report in that case gave the following comparison, at page 315:

Rates.	5 miles.	25 miles.	50 miles.	75 miles.	100 miles.
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Missouri intrastate.....	8.5	10.5	12	13	14.5
Oklahoma intrastate.....	10	12	14.5	17	19.5
Frisco: Oklahoma to Texas.....	12.5	17.5	22	26.5	30.5
Hutchinson, Kans., to Oklahoma.....	9.5	15.5	19.5	24.5	26.5
Kansas and Missouri to Arkansas and Missouri.....	9	19	31.5	36.5	.....
Kansas to Missouri.....	7.5	12.5	19	25	34
Oklahoma to Arkansas, Kansas, and Missouri.....	9	16.5	22.5	29	35

The interstate rates thus shown have been increased under Ex Parte 74. For distances exceeding 40 miles the Missouri intrastate rates have been increased to the extent above shown.

Oil refineries are located in Missouri at Kansas City, Sugar Creek, Sheffield, and Joplin. From the first three points interstate routes compete at common destinations with intrastate routes, and formerly maintained the same rates. The present rates to Boonville, Mo., for example, are 16.5 cents via the intrastate route of the Missouri Pacific, and 19.5 cents via the interstate route of the Missouri, Kansas & Texas. Many similar examples are given. For the interstate hauls from Coffeyville, Kans., and Cushing, Okla., to certain Missouri destinations the rates on petroleum were increased by amounts ranging from 6 to 8.5 cents over the rates in effect on August 25, 1920. The intrastate rates from Kansas City and Sugar Creek to the same destinations were increased by amounts ranging from 0.5 cent to 6.5 cents. If the latter rates had been increased the full 35 per cent, the increases would have ranged from 4 cents to 7.5 cents. The record furnishes similar comparisons of the rates from Vinita, Okla., and Joplin, Mo., to various Missouri points.

Kansas cement mills compete with mills located in Missouri in supplying consumers in Missouri. From Hannibal to certain Missouri destinations on the Missouri, Kansas & Texas, some of the intrastate rates were not increased by the Missouri commission, and others were increased in amounts not exceeding 2.5 cents. If all had been increased the full 35 per cent the increases would have ranged from 2 to 3 cents as compared with increases in the interstate rates from Iola, Kans., to the same destinations of 4 and 4.5 cents.

Prior to June 25, 1918, the Missouri commission had required that upon shipments of stone and certain other commodities consigned to officials of the state or counties, to be used for building public highways, a rate not exceeding 6 mills per ton per mile should be charged, minimum 40 cents per ton for each carrier. By general order No. 28 the rates on these commodities were increased 20 cents a ton. On April 14, 1919, the railroads under federal control were authorized by the Railroad Administration to charge for the transportation of certain road-building materials, in carloads, when for use in road building or road maintenance and when consigned to, and the freight paid by, a federal, state, county, parish, township, or municipal government, 10 cents per net ton less than the regularly published commercial tariff rates thereon, with a maximum charge of 40 cents per net ton, except that where the commercial rate was less than 40 cents per net ton, such rate should apply. By freight rate authority No. 18884, dated December 4, 1919, authority to charge these reduced rates was withdrawn, and generally respondents established and

thereafter applied the commercial rates on those commodities. The Missouri commission declined to permit the full 35 per cent increase in these rates. By order dated January 12, 1921, effective February 15, 1921, it required respondents to charge on carload shipments of stone, rock, or limestone (broken, crushed, or ground), sand, gravel, clay, and chats, between points wholly within the state of Missouri, consigned to officials of the nation, state, county, or municipalities, to be used in the construction of public highways, not more than 1 cent per ton per mile, with the following minimum charges: Where only one line is used, 60 cents per ton; two lines, \$1 per ton; and three or more lines, \$1.25 per ton. The Missouri commission in its report states that the Director General found a general increase of 25 per cent necessary; that we found the carriers in the western group entitled to an increase of 35 per cent; and that by applying those increases, aggregating 68.75 per cent, to the rate per ton-mile in effect June 24, 1918, the resulting rate per ton-mile would be 10.1 mills. Respondents contend that the failure of the Missouri commission to permit an increase of 35 per cent in the rates in effect when Ex Parte 74 was decided resulted and results in unjust discrimination against interstate traffic, and that the order of that Commission dated January 12, 1921, has aggravated the discrimination.

In August, 1920, when the rate on crushed stone from Weldon Springs, Mo., to St. Charles, Mo., was 3 cents per 100 pounds, 11 cars moved to St. Charles, as compared with 3 cars from Alton, Ill., at a rate of 6.075 cents. During March, 1921, 13 cars moved from Weldon Springs at the 3-cent rate, while there was no movement from Alton, the interstate rate therefrom having been increased to 8.5 cents.

There are sand producers in Kansas City, Mo., as well as near by in Kansas. Prior to August 26, 1920, all had the same rate to deliveries in Kansas City, 2 cents per 100 pounds. Since that date, the rate on interstate traffic has been increased to 2.5 cents, while the rate from plants on the Missouri side remains 2 cents.

The carriers submitted several comparisons of the rates on a number of the commodities in question from points in Missouri to St. Louis, Mo., and East St. Louis, Ill. The following rates from Valley Park, Mincke, Pacific, Red Gravel, Universal, Morelle, and Morelle Gravel Spur in cents per net ton on common sand and gravel are representative:

	August 25, 1920.	Present.
To East St. Louis.....	70 cents.	94.5 cents.
To St. Louis.....	50 cents.	50 cents.
St. Louis under East St. Louis.....	20 cents.	44.5 cents.

Joplin is in the center of the zinc and lead mining field in western Missouri, and chat is a refuse of those mines used very largely for road building and concrete work. The carriers show that the rates on chats based upon the Missouri intrastate scale are considerably lower than the interstate rates from Joplin to Kansas and Oklahoma points, to which there is a considerable movement, and that if the full 35 per cent increase over the August 31, 1920, intrastate rates were made effective, they would still in most instances be considerably lower than the interstate rates for the same distances. In addition, they point out that there are specific intrastate commodity rates from Joplin still lower than the scale referred to.

There is only an occasional movement of cinders in Missouri. Under the distance scale in Missouri, cinders take the crushed-stone rates.

In Missouri coke takes a higher rate than coal, except that on long hauls the rates are equal. There is but a small movement in Missouri. The Chicago, Burlington & Quincy shows that the rate increases allowed on intrastate shipments on its line were approximately 23.6 per cent against the 35 per cent allowed on interstate shipments.

The record affords numerous other specific examples of similar disparities between the interstate and intrastate rates on the commodities involved and clearly shows that the present relationship unduly prefers intrastate commerce to the undue prejudice and disadvantage of interstate traffic.

We find that the increases made by the respondents in the rates for the transportation of coal; coke; brick and articles basing thereon; sand; gravel; stone, except carved, etc.; crushed rock; chats; cinders; lime; cement; cement plaster; plaster and articles basing thereon; and petroleum oil and its products, under Ex Parte 74, and now in effect, result in reasonable charges for the interstate transportation of the said commodities within Missouri and between points in Missouri and points in other states, and that the failure of respondents correspondingly to increase their intrastate rates for the transportation of those commodities within the state of Missouri has resulted and will result in intrastate rates lower than the corresponding rates maintained on interstate traffic within the state of Missouri and between points in the state of Missouri and points in other states, in undue prejudice to shippers of interstate traffic, in undue preference of and advantage to shippers of intrastate traffic, and in unjust discrimination against interstate commerce.

We further find that such undue prejudice, undue advantage and preference, and unjust discrimination can and should be removed by making increases in the intrastate rates for the transportation of the

above-specified commodities as in effect on July 29, 1920, which shall correspond with the increases heretofore made, and now in effect, as aforesaid in the interstate rates for the transportation of the same commodities within Missouri and between points in Missouri and points in other states.

These findings apply to the rates on shipments intended for road-building purposes and consigned to government officials as well as to those on shipments for other purposes and are without prejudice to the right of the authorities of the state of Missouri or of any other party in interest to apply in a proper manner for a modification of our findings and order as to any specific intrastate rate for the transportation of any of those commodities on the ground that it is not related to the interstate rate in such a way as to contravene the provisions of the interstate commerce act.

Schedules giving effect to these findings may be made effective on not less than five days' notice.

An appropriate order will be entered.

COMMISSIONERS EASTMAN, CAMPBELL, and LEWIS dissent.

64 I. C. C.

No. 11820.

MISSOURI PORTLAND CEMENT COMPANY

v.

DIRECTOR GENERAL, AS AGENT.

Submitted June 8, 1921. Decided September 28, 1921.

Switching charges on shipments of sand, in carloads, during federal control, from complainant's plant in Memphis, Tenn., to points within the switching limits of Memphis, found unreasonable. Reparation awarded.

T. L. Phillips for complainant.

John F. Finerty and *A. M. Bull* for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

EASTMAN, *Commissioner*:

Exceptions were filed by the complainant to the report proposed by the examiner and the case was orally argued. Our conclusion differs from that suggested by the examiner.

Complainant, a corporation, has a sand plant at Memphis, Tenn., served by the Illinois Central, hereinafter called the initial line. By complaint, filed September 13, 1920, it alleges that the charges collected by defendant on sand, in carloads, shipped from its plant between June 25 and November 19, 1918, inclusive, to industries and sidetracks within the Memphis switching limits were unjust, unreasonable, and unduly prejudicial. Reparation only is sought.

The shipments weighed 100,000 pounds each and moved wholly within the switching limits of Memphis to points on the initial line and its connections. The applicable switching charges collected on shipments loaded in cars furnished by complainant were \$12 per car to points on the initial line and \$14 per car to points on connecting lines. Of the latter charge \$12 accrued to the initial line. An additional car-rental charge of \$3 per car was collected on certain shipments loaded in carrier's equipment and is not in issue. Nearly all of the shipments moved in complainant's cars.

For many years prior to June 25, 1918, the switching charge of the initial line was \$2 per car on shipments in cars furnished by complainant. On that date the charge was increased by 1 cent per

100 pounds pursuant to general order No. 28 of the Director General of Railroads. On November 20, 1918, it was reduced to \$6.50 per car, including car rental. Effective December 30, 1918, a flat charge of \$5 per car was established for intraterminal switching by the initial line on shipments loaded in complainant's equipment, which charge also applied as minimum on through shipments to points on connecting lines.

Complainant does not specifically attack the switching charge of \$2 per car of the connecting carriers applicable from their junctions with the initial line, but contends that the total switching charges on all shipments were unreasonable and unduly prejudicial to the extent that they exceeded \$5 per car. The allegations of unreasonableness and undue prejudice are based largely upon the fact that the switching charges of the initial line were increased more on sand than on other commodities and were much higher than those applicable on all other switching traffic in Memphis. No competition is shown between sand and other traffic.

The switching charge of the initial line represented an increase of \$10 per car, or 500 per cent over the former charge on a shipment weighing 100,000 pounds. Contemporaneously the former switching charge of \$3 per car applicable on all other commodities switched by the initial carrier between complainant's plant and industries or interchange tracks on its lines was increased to \$4, and the former switching charge of \$2 per car which applied generally from and to points in South Memphis was increased to \$2.50. Shipments in cars furnished by the initial carrier were subject to the additional charge for car rental. Complainant urges that on account of the large and regular movement and the low value of its sand, the charges should be less than on other commodities. It asserts that sand from its plant was subjected to the greater increase on June 25, 1918, solely because it was covered by a specific commodity switching charge instead of the general switching charge applicable on other traffic.

Defendant contends that the charges were reasonable and that special and unusual services are performed in connection with shipments from complainant's plant. Each morning a switching crew of the initial line moves the required number of empty cars from the carrier's yard, between 3 and 4 miles distant from the plant, to an auxiliary siding about 0.75 mile from the plant. It then takes five of the cars to the plant, spots them for loading, and after loading switches them to a track near the auxiliary siding and returns to the plant with another lot of five empty cars. This service is repeated throughout the day and is said to be necessary because complainant's track holds only five cars. Plant facilities are provided for spotting

the five cars as required, but the time consumed in loading them is not sufficient to permit the switching crew to perform other service. From 75 to 85 cars have been loaded in a day, but 35 is the daily average. At the close of the day the switching crew takes 20 or 25 of the loaded cars from the auxiliary track to the yard. The remaining loaded cars are removed by another switching crew. All of the sand shipments are classified at the yard and switched to destinations on the initial line or to interchange tracks with its connections. They are handled by from three to five switching crews, depending upon their destinations, for distances ranging from 2 to 11 miles, a considerable portion of which is over the main tracks of the initial line in congested localities. Defendant shows that during June, 1918, 203 cars were moved the following distances from complainant's plant to points on the initial line within switching limits: 19 cars under 5 miles, 175 cars 5 miles and under 10 miles, and 9 cars 10 miles and under 15 miles. An exhibit indicates that the distances from complainant's plant to junctions with the connecting lines to which shipments were delivered range from 4 to nearly 7 miles. A witness for defendant testified that an engine and crew costs \$16.395 per hour. There is no other specific evidence as to the cost of service. It does not appear that the service performed in connection with individual shipments of sand is necessarily greater than that accorded other commodities subject to the lower switching charge.

Defendant introduced exhibits showing that for line hauls from Memphis, ranging from 1 to 15 miles, charges of from \$25 to \$45 per car apply on sand, in carloads, weighing 100,000 pounds, and that the switching charges applicable on sand at New Orleans, La.; Louisville, Ky.; Omaha, Nebr.; and Peoria and Pekin, Ill.; for comparable hauls exceeded those assailed. These comparisons are not persuasive in the absence of evidence showing the surrounding circumstances and conditions.

In *Berg Distilling Co. v. P. R. R. Co.*, 48 I. C. C., 77, cited by defendant, we found that a rate of 53 cents per net ton on imported blackstrap molasses in tank-car loads was not shown to be unreasonable for a switching movement 2,300 feet in length in Philadelphia, Pa., but the conditions surrounding that movement were not fairly comparable with those presented in this case. Defendant also cites *Kaw River Sand & Material Co. v. A., T. & S. F. Ry. Co.*, 55 I. C. C., 683, in which we found a rate of 2 cents per 100 pounds reasonable for the transportation of sand in carriers' equipment from Turner, Kans., to points within the switching limits of Kansas City, Mo. Defendants therein had established that rate subsequent to the hearing and also a rate of 1.5 cents on sand loaded in shippers' equipment. These were blanket rates which applied from Turner,

Muncie, and Sirridge, Kans., and other sand-shipping points to all points within the Kansas City switching district. Most of the shipments moved over two or more lines. The average distances from complainant's plant near Turner were shown to be about 9.8 miles to interchange tracks in Kansas City and about 1 mile less to the usual delivery tracks. The rate prior to June 25, 1918, had been 1 cent per 100 pounds plus switching charges of connecting lines ranging from \$3 to \$8 per car. The shipments here in issue moved in cars furnished by complainant, except a few upon which an additional charge for car rental was assessed. As indicated in *Lehigh Portland Cement Co. v. Director General*, 58 I. C. C., 429, this is a fact which justifies lower rates than would be reasonable for shipments in carriers' equipment. In *Rogers-Brown Iron Co. v. Director General*, 59 I. C. C., 186, we found that a charge of \$2.60 per car as increased 1 cent per 100 pounds on June 25, 1918, for switching limestone in carriers' equipment at Buffalo, N. Y., was unreasonable to the extent that it exceeded \$7.50 per car. The length of haul ranged from 0.5 to 1.5 miles, but the empty cars were brought from remote points an average distance of 10 miles. Switching charges on stone similarly increased were found unreasonable in *Riverton Lime Co. v. Director General*, 60 I. C. C., 123, and *Lehigh Portland Cement Co. v. Director General*, *supra*.

Considering the regularity and volume of movement, the low value of complainant's shipments, and the fact that an additional car-rental charge was collected when the equipment was furnished by the carrier, no justification appears for switching charges so greatly in excess of those applicable on all other traffic switched within the Memphis terminals.

We find that the charges collected for switching the shipments in question from complainant's plant to points on the Illinois Central and to junctions with connecting lines within the switching limits of Memphis were unreasonable to the extent that they exceeded \$5 per car; that complainant made the shipments as described and paid and bore the charges thereon; that it was damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the charge herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with rule V of the Rules of Practice.

HALL, *Commissioner*, dissenting:

The report clearly indicates the exceptional service performed in connection with the loading and assembling of the cars. The movement was analogous to a line haul, although performed wholly within the switching limits of Memphis. The charge covered the

only haul there was of the loaded cars, and the return of the empties. For such a service charges ranging from \$9 to \$15 or more per car for like distances are not unusual.

The facts that the Director General subsequently reduced the charge, and that ordinary switching, largely reciprocal, was performed for a much lower charge, are not controlling unless we find in them the criteria of reasonableness, setting the mark beyond which the Director General in good conscience could not go under the circumstances which evoked his general order No. 28. I do not find that the charge passed this mark. The complaint should be dismissed.

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No. 8418.¹

RAILROAD COMMISSION OF LOUISIANA

v.

ARANSAS HARBOR TERMINAL RAILWAY COMPANY
ET AL.

Submitted September 15, 1921. Decided October 26, 1921.

On further hearing, found that the order entered on January 22, 1918, should be modified so as to except from its provisions the rate on sand and gravel, in carloads, from Hart Spur to Fort Worth, Tex.

U. S. Pawkett for Trinity Gravel Company.

Ed. P. Byars and *W. H. Darwin* for Fort Worth Sand & Gravel Company and Fort Worth Freight Bureau.

N. H. Lassiter and *Robert Harrison* for Chicago, Rock Island & Gulf Railway Company.

REPORT OF THE COMMISSION ON FURTHER HEARING.

HALL, Commissioner:

On petition of the Railroad Commission of Texas these proceedings have been reopened for further hearing for the purpose of considering the reasonableness, relationship, and propriety of the rates on sand and gravel from Hart Spur, Tex., to Fort Worth, Tex.

The petition of the Railroad Commission of Texas sets forth that Hart Spur is 8.5 miles easterly from Fort Worth on the Chicago, Rock Island & Gulf; that a point called Bonner Spur is on the same line 4.4 miles easterly from Fort Worth; that the sand-and-gravel rate to Fort Worth is 70 cents per ton from Hart Spur and \$9 per car from Bonner Spur; that the average loading is 50 tons per car, making the Bonner Spur rate average about 18 cents per ton; that the selling price of gravel, f. o. b. cars at the pit, is about 35 cents per ton, or two-thirds of the difference between the two rates; that Trinity Gravel Company operates a gravel pit near Hart Spur, and Fort Worth Sand & Gravel Company one near Bonner Spur; that the two companies are competitors in shipments to and beyond Fort

¹ This report also embraces No. 3918, Railroad Commission of Louisiana *v.* St. Louis Southwestern Railway Company et al.; No. 8290, Railroad Commission of Louisiana *v.* St. Louis, San Francisco & Texas Railway Company et al.; and Investigation and Suspension Dockets No. 710, Eastern Texas Class Rates, and No. 729, Class Rates to Shreveport, La.

Worth; that the Railroad Commission of Texas on complaint of Trinity Gravel Company has reached the conclusion that the rates to Fort Worth subject Trinity Gravel Company to undue prejudice and give undue preference to Fort Worth Sand & Gravel Company, which should be removed by reducing the rate from Hart Spur, but that because of orders of this Commission it can not afford this relief; that the Hart Spur rate was originally established under our order of January 22, 1918, herein, 48 I. C. C., 312, 351, and by the percentage increases under general order No. 28 of the Director General of Railroads and our report in Ex Parte 74, *Increased Rates*, 1920, 58 I. C. C., 220, has become 70 cents per ton; and that the Bonner Spur rate is an intracity switching rate established at \$5 a car under an order of the Railroad Commission of Texas, being R. C. T. Circular No. 3358, effective April 12, 1910, amended by R. C. T. Circular No. 4664 dated October 31, 1914, as increased under general order No. 28, and prescribed at \$9 per car by our order in *Intrastate Rates within the State of Texas*, 60 I. C. C., 421, and 62 I. C. C., 591.

The record establishes the facts set forth in the petition. The competitor as well as the carrier admit that these intrastate rates subject Trinity Gravel Company to undue prejudice which should be removed. They differ as to the mode of removal. The competitor favors reduction of the Hart Spur rate and the carrier increase of the Bonner Spur rate. The carrier recently attempted to designate by tariff Bonner Spur as a station, but the Railroad Commission of Texas has not permitted the tariff to be published. Under the amendment made by R. C. T. Circular No. 4664, such publication would have eliminated that point from the intracity switching territory and it would then have taken the road-haul rate which, under our order of January 22, 1918, would have been under the same distance scale as applies from Hart Spur.

This scale of reasonable maximum rates to be applied between Shreveport and points in Texas was prescribed by that order in 48 I. C. C., 312, 351. The rate for 10 miles or less was originally 25 cents per ton. It was increased by 1 cent per 100 pounds under general order No. 28, and further increased by 35 per cent following Ex Parte 74. By the method prescribed in dealing with fractions it has now been published as 3.5 cents per 100 pounds, the equivalent of 70 cents per ton. The scale was established between points in Texas by the carriers, acting under sections VII and VIII of that order which directed that they maintain and apply to the transportation of sand and gravel between Shreveport and points in Texas rates not in excess of those contemporaneously applied by them for the transportation of like property for like distances between points in Texas.

It is not shown that any undue prejudice to Shreveport would or could result from excepting the Hart Spur rate from these sections of the order under the circumstances of this case. The undue prejudice complained of is wholly in respect of intrastate traffic to Fort Worth from Hart Spur and Bonner Spur, respectively, and thus not within our jurisdiction. The remedy for such undue prejudice, if it exists, lies with the state authority.

Upon this record we find and conclude that our order herein of January 22, 1918, should be modified so as to except from sections VII and VIII thereof the rate on sand and gravel, in carloads, from Hart Spur to Fort Worth. An order will be entered accordingly.

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INVESTIGATION AND SUSPENSION DOCKET No. 1377.

SUBSTITUTION OF SINGLE-DECK FOR DOUBLE-DECK
CARS ORDERED.

Submitted October 5, 1921. Decided November 3, 1921.

Proposed rule, applicable in official classification territory, providing for the substitution of single-deck for double-deck live-stock cars ordered for the transportation of hogs, in carloads, found not justified with respect to the provision affecting orders for double-deck cars in excess of 20. Suspended paragraph ordered canceled without prejudice to the establishment of the rule proposed in lieu thereof.

W. J. Stevenson for respondents.

W. W. Manker for Armour & Company and New York Butchers' Dressed Beef Company; *C. O. Cornwell* for Cudahy Packing Company; and *C. B. Hutchings* for American Farm Bureau Federation. No appearance for protestants.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, AITCHISON, AND LEWIS.

McCHORD, *Chairman*:

The respondent carriers herein proposed, by exceptions to the official classification to become effective August 10, 1921, to change the rule governing the use of single-deck live-stock cars in lieu of double-deck live-stock cars ordered by shippers for the transportation of hogs, in carloads, between points in official classification territory. The proposed rule provides that if the carrier is unable to furnish the number of double-deck stock cars ordered by a shipper on one day then single-deck stock cars will be furnished in place of the double-deck cars so ordered, in accordance with a table of equivalents. This table prescribes the number of single-deck stock cars which will be furnished for any number of double-deck cars up to 20. For cars over 20 the rule reads:

If more than 20 double-deck live stock cars are ordered sufficient number of single-deck live stock cars will be furnished to take care of the stock that could have been loaded in the number of double-deck live stock cars ordered, provided the stock could have been loaded in standard double-deck live stock cars of 36 feet 7 inches in length of the number ordered.

Upon protests by several live-stock shippers the foregoing paragraph was suspended until January 7, 1922.

During the period of federal control a tariff rule was established, applicable at primary markets, under which two single-deck live-stock cars were furnished for each double-deck live-stock car ordered for the transportation of hogs, under certain conditions as to time and notice. The operation of this two-for-one rule, it is stated, resulted in excessive service demands on the carriers without substantial benefit to live-stock shippers as a whole. It appears that in times of car shortage there resulted an unusual shortage in the supply of single-deck stock cars, particularly at country stations. After the termination of federal control it was the desire of the carriers to change the substitution rule to a basis which would be more favorable to them and at the same time more equitable to live-stock shippers generally. The table of equivalent single-deck cars to be furnished for shipments of hogs in lieu of double-deck cars from 2 up to and including 20 was adopted after conference between the carriers and interested shippers.

Respondents assert that orders for double-deck cars in excess of 20 in number are very unusual except at the large markets, where orders in excess of that number are sometimes received. Objections made by certain shippers indicate, however, that the rule governing the furnishing of single-deck cars when more than 20 double-deck cars are ordered is not satisfactory, because of its lack of definiteness and its susceptibility to various interpretations.

Respondents now further propose to extend their table of equivalents beyond 20. This extension will be included in the same item in the tariff and will provide for the substitution of single-deck cars for double-deck cars when ordered in numbers from 21 up to and including 40. Any order in excess of 40 will be handled as if a separate order had been placed for the excess, and single-deck cars will be supplied for such excess in accordance with the prescribed table.

The rule provides that charges will be assessed on the basis of the rate and minimum weight applying on the number of double-deck cars ordered. Actual weight will be charged for if in excess of the minimum weight.

We find that the suspended rule has not been justified. An order will be entered requiring the cancellation of the rule under suspension and discontinuing this proceeding, without prejudice to the establishment by respondents of the proposed extension of the rule and the table of equivalents to include orders for double-deck live-stock cars in excess of 20.

No. 11541.

ARIZONA CORPORATION COMMISSION ET AL.

v.

ARIZONA EASTERN RAILROAD COMPANY ET AL.

Submitted May 26, 1921. Decided October 4, 1921.

Passenger fares between points in Arizona and points in Nevada, between points in Arizona and points in New Mexico, between points in New Mexico and points in Nevada, and between points in Arizona, Nevada, and New Mexico and points in other states, found not unreasonable, unjustly discriminatory, or unduly prejudicial. Complaint dismissed.

F. A. Jones and *D. F. Johnson* for Arizona Corporation Commission; *J. F. Shaughnessy* for Public Service Commission of Nevada; and *Hugh H. Williams*, *J. M. Luna*, and *Bonifacio Montoya* for State Corporation Commission of New Mexico.

E. W. Camp, *W. A. Hawkins*, *H. H. McElroy*, *J. G. McMurry*, *Fred E. Pettit, jr.*, *Lester J. Hinsdale*, *G. P. Bullard*, *Fred H. Wood*, *Elmer Westlake*, and *C. W. Durbrow* for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Exceptions were filed by the complainants to the proposed report by the examiner in this case.

Complainants are the Arizona Corporation Commission, the Public Service Commission of Nevada, and the State Corporation Commission of New Mexico. By complaint filed June 15, 1920, it is alleged that the fares and charges for the transportation of passengers in force over lines of the defendants between points in Arizona and points in Nevada, between points in Arizona and points in New Mexico, between points in New Mexico and points in Nevada, and between points in Arizona, Nevada, and New Mexico and points in other states, not named, are unjust, unreasonable, unjustly discriminatory, and unduly prejudicial in comparison with interstate passenger fares and charges in effect over the lines of carriers operated under substantially similar conditions in other portions of intermountain territory, more particularly in the states of Colorado, Idaho, Montana, Utah, and Wyoming, and interstate fares and

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charges for approximately equal distances between other points on the lines of defendants, in violation of sections 1, 2, and 3 of the interstate commerce act.

Defendants are Southern Pacific, Atchison, Topeka & Santa Fe, Western Pacific, Los Angeles & Salt Lake, Chicago, Rock Island & Pacific, El Paso & Southwestern, Denver & Rio Grande, Arizona Eastern, and Grand Canyon railroads.

The general basis for interstate passenger fares throughout the United States at present in effect is 3.6 cents per mile. The general bases in Arizona, New Mexico, and Nevada for defendants' interstate main-line passenger fares to, from, and through those states is 4.8 cents per mile, except that on the Denver & Rio Grande in New Mexico the basis is 5.4 cents per mile, and on the Los Angeles & Salt Lake in Nevada and portions of the Arizona Eastern in Arizona, 6 cents per mile. The interstate bases on certain of defendants' branch lines run as high as 7.2 cents per mile. The bases above referred to are not confined strictly within the boundaries of the states in question. In certain instances they extend beyond to points in Texas, Colorado, Utah, and California.

In *Arizona Corporation Commission v. A., T. & S. F. Ry. Co.*, 45 I. C. C., 436, there were under attack interstate passenger fares from various points to Arizona destinations which were upon a higher basis per mile than the fares to points in other western states. We there found that the fares attacked were not shown to be unjust or unreasonable.

In *Increased Rates, 1920*, 58 I. C. C., 220, decided July 29, 1920, we divided the continental United States into four groups and authorized, among other things, a general increase of 20 per cent in the interstate passenger fares of steam carriers throughout all the groups. The increases so authorized became effective generally on August 26, 1920. Nevada and Arizona are in the mountain-Pacific group, and New Mexico is partly in that group and partly in the western group. Since the decision in *Increased Rates, 1920, supra*, we have had occasion in various proceedings, instituted upon petitions of the carriers under section 13 of the act, to examine the increased interstate standard passenger fares in the western and mountain-Pacific groups, and the relationship thereto of intrastate standard passenger fares in various states. In two such proceedings, *Nevada Rates, Fares, and Charges*, 60 I. C. C., 623, and *Arizona Rates, Fares, and Charges*, 61 I. C. C., 572, which were heard and decided since the hearing in this case, we had before us the interstate passenger fares applying to, from, and through the states of Nevada and Arizona, and the intrastate fares in those states. We there found, as in the other cases referred to, that the increased in-

terstate fares were reasonable, and required corresponding increases in the intrastate fares in order to remove unjust discrimination against interstate commerce which was found to exist. The carriers made increases in the New Mexico intrastate fares corresponding to those made in the interstate fares, without the permission of the State Corporation Commission of New Mexico.

The Public Service Commission of Nevada and the Arizona Corporation Commission were represented at the hearings in the two cases last cited, respectively, and presented evidence in support of their contentions that the interstate fares were too high in comparison with other fares which were upon a lower per-mile basis, which evidence is discussed in the reports in those cases. The evidence presented by the complainants here with respect to the allegation of unreasonableness, as well as the allegations of unjust discrimination and undue prejudice, is along the same general lines as that offered in the cases referred to, and does not indicate that conditions in New Mexico are different to a substantial extent from those in Arizona. The defendants introduced much testimony and numerous exhibits to show that they are justified in maintaining the fares assailed by reason of light passenger travel and difficult and expensive operating conditions in the states in question.

All the evidence presented in this case has had careful consideration, but an elaborate discussion thereof at this time would appear to be unnecessary in view of our recent discussion of generally similar evidence in the reports in the two state cases above referred to.

Upon consideration of the present record, we are of opinion and find that the fares and charges assailed are not unreasonable, unjustly discriminatory, or unduly prejudicial.

An order dismissing the complaint will be entered.

CAMPBELL, *Commissioner*, dissenting:

I am unwilling to join in the conclusions reached by the majority herein. The Commission in *Nebraska Rates, Fares, and Charges*, 60 I. C. C., 305, at page 308, said:

The usual basis of fare almost the country over for interstate or intrastate, local or joint, main or branch line service, is 3.6 cents per mile. Minor differences in circumstances and conditions are not reflected in the fares.

Simplicity and uniformity, it seems to me, require that we under certain circumstances disregard differences in conditions. It is done frequently by the carriers and this Commission in establishing rates applicable to or from large groups or covering numerous commodities.

Regardless of the heavy traffic density in New England and in trunk line territories and regardless of the light traffic density in
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many western and far western states, 3.6 cents per mile generally applies. Practically the whole country is averaged and given a common basis. I can see no good reason for excepting a comparatively small portion of the west and charging it fares considerably above the average while we do not except the eastern territories and afford them a basis less than the average.

The report points out that the interstate bases in this territory range from 4.8 cents to 6 cents per mile, and run as high as 7.2 cents per mile on branch lines. The general increase of 20 per cent authorized in *Increased Rates, 1920*, 58 I. C. C., 220, I think might well have been limited to fares not in excess of 3 cents per mile except to the extent necessary to make them 3.6 cents per mile.

COMMISSIONERS AITCHISON and EASTMAN also dissent.

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INVESTIGATION AND SUSPENSION DOCKET No. 1386.

REFINING IN TRANSIT OF COPPER ARTICLES AT
LAUREL HILL, N. Y.

Submitted October 25, 1921. Decided November 2, 1921.

Proposed cancellation of refining-in-transit arrangements at Laurel Hill (Nichols siding), N. Y., on copper and lead moved all rail from points west of Buffalo, N. Y., and Pittsburgh, Pa., and the refined product moved thence to New England destinations, found not justified. Suspended schedule ordered canceled.

C. L. Addison for Long Island Railroad Company; and *W. W. Meyer* for New York, New Haven & Hartford Railroad Company.

Steele & Otis for Nichols Copper Company; and *Douglas, Armistage & McCann* for Phelps Dodge Corporation, protestants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND ESCH.

BY DIVISION 3:

By schedule filed to become effective August 29, 1921, the Long Island, at the request of the New York, New Haven & Hartford, hereinafter called the New Haven, proposed to cancel refining-in-transit arrangements at Laurel Hill (Nichols siding), N. Y., applicable to copper anodes, bars, bullion, cakes, cathodes, ingots, matte, ore, and slabs, and to lead bullion, hereinafter collectively termed copper and lead, moved all rail from points west of Buffalo, N. Y., and Pittsburgh, Pa., and the refined product thereof moved thence to destinations in New England on the New Haven. Upon protests by the Nichols Copper Company, which operates a refining plant at Laurel Hill, the Chamber of Commerce of the Borough of Queens, New York, N. Y., and the Phelps Dodge Corporation, the operation of the schedule was suspended until December 27, 1921. Cancellation of the refining-in-transit arrangements would result in the imposition of materially higher local rates on the refined product from Laurel Hill to destinations on the New Haven in lieu of the existing spread in the joint rates from western origins to New England over those to New York, plus the refining-in-transit charge. Respondents do not propose to make any change in the arrangements in effect on

copper and lead moved by rail to Galveston, Tex., thence by ocean lines to New York.

In anticipation of the establishment of refining-in-transit at Laurel Hill, physical connection between the rails of the Long Island and the plant tracks of the Nichols Copper Company was completed at an expenditure of about \$185,000 just prior to such establishment on February 1, 1919, under which no provision was made for division of the earnings beyond Laurel Hill. Since the termination of federal control respondents have endeavored to agree upon the division of those earnings, but without success. The New Haven receives this traffic at Fresh Pond Junction, N. Y., its interchange point with the Long Island, moves it over the rails of the New York Connecting to a junction with its own rails at Casanova, N. Y., and thence to the New England destinations. The New Haven contends that for this service it is entitled to the same revenue on copper and lead refined on the Long Island as it receives east of Jersey City and Communipaw, N. J., on copper and lead refined at Brills, Perth Amboy, Carteret, and Chrome, N. J. The Long Island shows that the service it performs from its float bridges at Long Island City, N. Y., to Fresh Pond Junction is through a congested territory in New York City where the traffic density is high, and contends that its compensation for that service should be increased.

These transit arrangements were established to place Laurel Hill on a parity in that respect with refiners at the New Jersey points named. Cancellation of the transit arrangements will restore the disparity theretofore existing. The service performed by respondents on copper and lead moved from Arizona, for example, via Galveston and the Mallory Steamship Company or the Morgan line steamers to New York, is identical with that performed on all-rail shipments. Divisions satisfactory to respondents have been arranged on rail-gulf-and-rail traffic, and transit on that traffic is consequently maintained. Each respondent admits that, if reasonable compensation for the services it performs on all-rail traffic could be obtained, it would willingly participate in continuance of the refining-in-transit arrangements under consideration.

It is well settled that a disagreement between carriers over divisions of rates is no justification for an increase in rates.

We find that respondents have not justified their proposed cancellation of the refining-in-transit arrangements at Laurel Hill. An order will be entered directing cancellation of the schedule under suspension.

INVESTIGATION AND SUSPENSION DOCKET NO. 1367.
INTERCHANGE SWITCHING AT TOPEKA, KANS.

Submitted September 20, 1921. Decided November 4, 1921.

Proposed cancellation of charges on carload traffic from interchange tracks in Topeka, Kans., to certain outlying industries and institutions adjacent thereto found not justified. Suspended schedules ordered canceled without prejudice to the filing of new schedules in conformity with plan outlined herein.

J. C. LaCoste and E. F. Strain for respondent.

E. H. Hogueland and W. C. Ralston for protestants.

W. C. Ralston for state of Kansas.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

By schedules filed to become effective July 23, 1921, the Chicago, Rock Island & Pacific, hereinafter called respondent, proposed to cancel from its local switching tariff applicable at Topeka, Kans., the existing charges for delivery of carload traffic from interchange tracks between it and other lines in Topeka to a number of outlying industries and institutions. This would result in application of higher rates published in road-haul tariffs which could not be absorbed by connecting lines at Topeka under their switching-absorption rules. Upon protests by the state of Kansas, the Topeka Traffic Association, and the affected consignees the schedules were suspended until December 20, 1921.

Among the consignees affected are the state hospital, city water works, Capital City Vitrified Brick Company, Knights and Ladies of Security Home, Bishop brick yard, Miller's feed yard, the reform school, and industries at Shorey, Kans. They are outside of the Topeka switching district, and from 300 to 2,500 feet from respondent's main line on spur tracks with grades as high as 4 or 5 per cent. The spur tracks are from 1.5 to nearly 6 miles from the interchange tracks in Topeka.

Prior to February 26, 1916, class and commodity rates from Topeka published in road-haul tariffs applied to these points, but, on that date, upon request of the state of Kansas, respondent's

switching tariff was made applicable and substantial reductions were effected. The resulting carload charge became 1.5 cents per 100 pounds, minimum \$6 per car, for all commodities, except as otherwise provided in the tariff. This charge was not increased under general order No. 28 of the Director General of Railroads, but was increased to 2 cents per 100 pounds, minimum \$8 per car, under the general increase of 1920.

Respondent has not considered this as a switching charge, although published as such. It is compared with higher class and commodity rates applicable on other lines, including the Union Pacific, to stations within 10 miles of Topeka and in the vicinity of these consignees. Higher rates also apply to stations on the Atchison, Topeka & Santa Fe for the same relative distances from Topeka.

In lieu of the proposed rates respondent is willing, on traffic of these consignees now moving at Topeka rates, to negotiate with connecting lines for establishment of joint rates, and for divisions thereof equal in amount to the switching charges now absorbed by those lines; and on traffic not moving at Topeka rates, chiefly non-competitive, it is willing to publish in its road-haul tariffs rates equal to its present switching charges as proportionals applicable on traffic interchanged with connecting lines. On the latter traffic the excess over the Topeka rate would remain as at present. This plan is satisfactory to protestants.

We find that respondent has not justified the suspended schedules. An order will be entered requiring their cancellation, without prejudice to the filing of schedules upon not less than five days' notice in conformity with the above plan.

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INVESTIGATION AND SUSPENSION DOCKET No. 1369.

WOOLEN YARN FROM SKOWHEGAN, ME., TO BOSTON,
MASS., AND OTHER POINTS.*Submitted September 6, 1921. Decided October 29, 1921.*

Proposed cancellation of any-quantity commodity rates on woolen yarn from Skowhegan, Me., to Portland, Me., Sawyer, N. H., Boston, Mass., certain points taking Boston rates, and New York, N. Y., in so far as applicable to interstate traffic, found not justified and suspended schedules ordered canceled.

Charles H. Blatchford for respondents.

George W. Collier for protestant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND ESCH.

BY DIVISION 3:

By schedules filed to become effective July 31, 1921, and thereafter, respondents propose to cancel certain any-quantity commodity rates applicable on woolen yarn, in cases or bales, from Skowhegan, Me., to Portland, Me., on the Maine Central Railroad; Sawyer, N. H., Boston, and seven other points in Massachusetts taking Boston rates, on the Boston & Maine Railroad; and New York, N. Y., and to apply first-class rates. Upon protest of the Maine Spinning Company, which manufactures woolen yarn at Skowhegan for makers of cloth, operation of the schedules was suspended until December 27, 1921.

The destinations to which the commodity rates apply, their distances from Skowhegan, the commodity rates sought to be canceled, and the first-class rates which will apply if the commodity rates are canceled, appear below:

To—	Distance.	Com- modity rate.	First- class rate.
	<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>
Portland, Me.....	100	45.5	71.5
Sawyer, N. H.....	145	63	81.5
North Andover, Mass.....	184	63	91
Machine Shop, Mass.....	185	63	91
Lawrence, Mass.....	185	63	91
South Wilmington, Mass.....	198	63	93
Lowell, Mass.....	198	63	93
Boston, Mass.....	208	63	94.5
Bemis, Mass.....	217	63	95.5
Maynard, Mass.....	220	63	95.5
New York, N. Y. ¹		66.5	112
Do. ²		77.5	112

¹ Via Portland, Boston & Maine, Boston, and Eastern Steamship Company.

² Via Boston & Maine, Belchertown, Mas., and Central Vermont Railway.

From Skowhegan to New York over the lines of the Maine Central and New York, New Haven & Hartford railroads and New England Steamship Company, no commodity rate is in effect and the first-class rate of 99.5 cents applies.

During the pendency of *New England Divisions*, 62 I. C. C., 513, the New England carriers sought methods to increase their revenues, among which was the cancellation of such less-than-carload commodity rates as still remain effective in New England, thus making applicable in place thereof the so-called Anderson scale of class rates which we authorized in *Proposed Increases in New England*, 49 I. C. C., 421, increased by subsequent general increases. No action in this direction was taken by them pending the outcome of *New England Divisions*, *supra*. On February 26, 1921, complaint in No. 12492, *Maine Spinning Co. v. Director General*, now pending, was filed, asking the establishment of commodity rates on woolen yarn from Skowhegan to Worcester and other points in Massachusetts, Rhode Island, and Connecticut on the New York, New Haven & Hartford. Thereupon the Maine Central filed the tariffs here under suspension, proposing complete cancellation of all commodity rates on woolen yarn from Skowhegan, the only point on its line from which woolen yarn moves. The Maine Central contends, in the light of our approval of the Anderson scale in *Proposed Increases in New England*, *supra*, that the class rates are reasonable and normal; that the commodity rates are subnormal; and that protestant's competitors, who now pay class rates for the transportation of woolen yarn, will be on a parity with protestant in the kind of rates charged.

For many years the rating and rates throughout New England on woolen yarn have been the same as on woolen cloth. Commodity rates on woolen cloth are not now sought to be canceled. The Maine Central admits that the proposed cancellation of the commodity rates on woolen yarn is contrary to the principle of *New England Dry Goods*, 49 I. C. C., 147, that so long as commodity rates on piece goods are maintained a similar commodity-rate basis should not be denied to manufacturers of wholly or partly finished cloth. In that investigation the respondents urged the propriety of the substitution of classification ratings in lieu of commodity rates, but the ratings were found not justified. Protestant concedes that when the rates on cloth are adjusted the rates on yarn should be on the same level, but contends that increase of yarn only to the class basis is unreasonable and discriminatory. Protestant admits that there is no competition between woolen yarn and woolen cloth.

The yarn manufactured by protestant is wound on shuttle bobbins ready for weaving, and is shipped in cases. A case weighing 600 pounds contains 200 pounds of yarn and 300 pounds of bobbins.

The empty bobbins and cases are returned to Skowhegan at second-class rates. The value of the yarn is about \$300 per case. A case of the same size containing woolen cloth of a grade comparable to the yarn of protestant would weigh approximately 820 pounds and be valued at \$1,000. Protestant pays the same rate per 100 pounds for the transportation of yarn as is paid for the transportation of cloth, but the charge for the net weight of yarn is considerably more than for the net weight of cloth.

The total movement of yarn from Skowhegan to all destinations from January 1, 1920, to April 30, 1921, was approximately 560 tons, all of which moved in less-than-carload quantities. About three-fourths of the total moved initially to Boston, North Andover, and Lawrence. All of protestant's shipments to points beyond Boston are made to a forwarding agent at Boston, who transfers them across the city, thus saving from three days to two weeks in their transportation. For the movement beyond Boston class rates are applicable. Hence, a large proportion of the tonnage from Skowhegan moves on class rates, or on combinations of the commodity rates to the distributing points and class rates beyond. Protestant ships to points other than Boston, North Andover, and Lawrence, principally to Lowell and Holyoke, Mass., Woonsocket, R. I., and Philadelphia, Pa., to which class rates apply. Apparently because consignees specified the routing, all of the woolen yarn shipped from Skowhegan to New York during the 16-month period from January 1, 1920, moved at the first-class rate, although lower commodity rates were in effect over other routes.

The commodity rates have been in effect for a number of years. In 1912 that from Skowhegan to Boston was 20 cents; the first-class rate was 39 cents. Since then the commodity rate has been increased by 43 cents and the class rate by 55.5 cents. Protestant has competitors at Boston and Lawrence, the points to which its principal shipments are made. Lawrence is near North Andover. Any increase in the rates from Skowhegan will increase the disadvantage under which protestant now labors on account of its location. The commodity rates to some points have not been used during the period from January 1, 1920, to April 30, 1921, but protestant desires their maintenance in anticipation of future orders.

Following *New England Dry Goods, supra*, and without approving an any-quantity basis for the rates, we find that the proposed schedules, in so far as they relate to interstate traffic, have not been justified. An order will be entered requiring cancellation of the schedules under suspension.

No. 10500.

CORPORATION COMMISSION OF NORTH CAROLINA

v.

DIRECTOR GENERAL, ATLANTIC COAST LINE RAILROAD
COMPANY, ET AL.

No. 10515.

RALEIGH CHAMBER OF COMMERCE, INCORPORATED,
ET AL.

v.

DIRECTOR GENERAL, SEABOARD AIR LINE RAILWAY
COMPANY, ET AL.

Decided November 10, 1921.

Upon further consideration, findings in 62 I. C. C., 64, modified. Maximum relationships of rates prescribed between points in North Carolina and Norfolk and Richmond, Va., on the one hand, and points in South Carolina and the southeast on the other, and between points in North Carolina and Norfolk and Richmond, on the one hand, and eastern points, on the other.

Appearances same as in report on further argument.

SUPPLEMENTAL REPORT OF THE COMMISSION.

EASTMAN, Commissioner:

In our report on further argument, 62 I. C. C., 64, we modified the findings in our original report, 57 I. C. C., 523, with respect to the relationships of rates between certain points in North Carolina and eastern ports and interior points, and also between such North Carolina points and the southeast, as compared with the corresponding rates to and from Norfolk and Richmond, Va. The situation with which the case deals is highly complex, and in attempting to comply with our findings defendant carriers have met with various difficulties which have been brought to our attention and which have been the subject of conferences with the parties in interest. Upon further consideration we have deemed it advisable to again modify our findings and order in a manner not inconsistent with their intent and purpose, but with a view to clarification and the avoidance of the difficulties which have been encountered.

Between—	And—	Minimum spread.
		<i>Cents.</i>
(1c) Points on the Southern, Winston-Salem to Raleigh inclusive: Points on Atlantic & Yadkin (formerly Southern), Greensboro via Stokesdale to but not including Madison: Points on Seaboard Air Line, Norlina to Durham inclusive; Henderson to Bonsal inclusive, via Raleigh and Apex; Oxford to Dickerson inclusive; and Lousburg branch.	Points described in (3a).....	25
Points described in (1c).....	Points described in (3b).....	25
(2a) Points on Atlantic Coast Line, Dunn to Fayetteville inclusive; Sanford to Fayetteville, not including Sanford; Fayetteville to South Carolina state line via Pembroke, also via Maxton; Elrod to South Carolina state line via Proctorville, Chadbourn, and Mount Tabor; Wilmington to South Carolina state line just east of Nichols, S. C., not including Wilmington: All points on Aberdeen & Rockfish, except Aberdeen: All points on Virginia & Carolina Southern: All points on Raleigh & Charleston in North Carolina: All points on Maxton, Alma & Southbound: Points on Laurinburg & Southern, Laurinburg to Johns inclusive: Points on Seaboard Air Line, Wilmington to Hamlet, not including Wilmington or Hamlet; and Hamlet to Gibson, not including Hamlet.	Points described in (3a).....	42
Points described in (2a).....	Points described in (3b).....	35
(2b) Points on Atlantic & Yadkin (formerly Southern), Greensboro to Sanford, not including Greensboro; Ramseur branch: Points on High Point, Randleman, Ashboro & Southern (formerly Southern), not including High Point: Points on Southern, Winston-Salem to Barber, not including Winston-Salem; Statesville to Salisbury inclusive; Barber to Charlotte via Mooresville; Lexington to Charlotte: Points on Yadkin Railroad (formerly Southern Ry., Norwood branch): Points on Winston-Salem Southbound, except Winston-Salem: Points on Norfolk Southern, Mount Gilead to Colon inclusive, and Ashboro to Aberdeen inclusive: Points on Seaboard Air Line south of Bonsal to South Carolina state line just north of Cheraw, S. C.; Pittsboro branch; Hamlet to Charlotte inclusive; Monroe to South Carolina state line: Points on Randolph & Cumberland Ry., Cameron to Carthage inclusive: Points on Rockingham Railroad, not including Gibson: Points on Atlantic Coast Line, Wadesboro to South Carolina state line.	Points described in (3a).....	37
Points described in (2b).....	Points described in (3b).....	39
Points described in (1a).....	(4a) All points in South Carolina (other than those included in group 3a), south or east of Seaboard Air Line, Hamlet to Columbia; on, east, or north of a line drawn from Columbia to Orangeburg, not including Columbia; on, east, or north of the line of the Southern, Orangeburg through Branchville to and including Charleston.	11
Points described in (1a).....	(4b) All points in South Carolina, other than those included in group 3b, on, north, or west of the line of the Seaboard Air Line, Hamlet to Columbia; on or north of the Columbia, Newberry & Laurens, Columbia to Newberry; on, north, or west of the Southern, Newberry to Greenwood; on, or north of the Seaboard Air Line, Greenwood to the Savannah River.	9
Points described in (1b).....	Points described in (4a).....	23
Points described in (1b).....	Points described in (4b).....	17
Points described in (1c).....	Points described in (4a).....	23
Points described in (1c).....	Points described in (4b).....	23
Points described in (2a).....	Points described in (4a).....	39
Points described in (2a).....	Points described in (4b).....	23
Points described in (2b).....	Points described in (4a).....	34
Points described in (2b).....	Points described in (4b).....	36

Between—	And—	Minimum spread.
		<i>Cents.</i>
Points described in (1a).....	(5a) All points in South Carolina south of groups 4a and 4b; also points in Georgia on the Charleston & Western Carolina.	10
Points described in (1a).....	(5b) Points in Georgia on or south of the Southern, Lula to the Savannah River, not including Lula; east of the Southern, Lula to Athens; and on or north of the Seaboard Air Line, Athens to the Savannah River, not including Athens.	9
Points described in (1b).....	Points described in (5a).....	21
Points described in (1b).....	Points described in (5b).....	15
Points described in (1c).....	Points described in (5a).....	21
Points described in (1c).....	Points described in (5b).....	21
Points described in (2a).....	Points described in (5a).....	34
Points described in (2a).....	Points described in (5b).....	21
Points described in (2b).....	Points described in (5a).....	32
Points described in (2b).....	Points described in (5b).....	32
Points described in (1a).....	(9) All points in the state of Georgia on or north of the Georgia Railroad, Augusta to Atlanta, not including Augusta; on, north, or west of Atlanta & West Point R. R., Atlanta to West Point, inclusive; excluding that portion of Georgia included in group 5b; also excluding points the short-line workable routes to which from North Carolina points are via the line of the Southern, through Knoxville and Chattanooga, Tenn.	8
(1d) Points on the Atlantic Coast Line, Weldon via Goldsboro to Wilmington, not including Weldon or Wilmington; Spring Hope branch; Clinton branch; Wilson to Smithfield, inclusive; Goldsboro to Smithfield: Points on the Norfolk Southern, Wilson to Raleigh, not including Raleigh: Points on the Southern, Goldsboro to Raleigh, not including Raleigh: Points on the Atlantic & Yadkin (formerly Southern), Greensboro via Stokesdale to Madison, not including Greensboro or Madison: Points on the Seaboard Air Line, Littleton via Henderson, to but not including Raleigh; Henderson to Durham, not including Durham; Louisville branch; Oxford branch.	Points described in (9).....	13
(2e) Points on the Atlantic Coast Line, Smithfield to Fayetteville, not including Smithfield; Fayetteville to Wilmington, not including Wilmington; Fayetteville to Sanford; Fayetteville to South Carolina state line via Parkton and Pembroke; Parkton to Maxton, not including Maxton; Elrod via Proctorville and Chadbourne to South Carolina state line just beyond Mount Tabor; Wilmington to South Carolina state line just east of Nichols, S. C., not including Wilmington: Points on the Seaboard Air Line, Wilmington to Maxton, not including Wilmington or Maxton; Raleigh to Aberdeen, not including Aberdeen; Pittsboro branch: All points on the Aberdeen & Rockfish, not including Aberdeen: All points on the Virginia & Carolina Southern: Points on the Alma, Maxton & Southbound: All points on the Raleigh & Charleston in North Carolina: Points on the Southern, Raleigh to Winston-Salem, inclusive; Chapel Hill branch; Raleigh on the Norfolk Southern; Greensboro on the Atlantic & Yadkin.	Points described in (9).....	21
(2e) Points on the Atlantic & Yadkin (formerly Southern), Greensboro to Sanford not inclusive, but including points on the Ramseur branch: Points on the High Point, Randleman, Ashboro & Southern (formerly Southern), not including High Point: Points on Southern, Lexington to Charlotte, not including Charlotte; Winston-Salem via Barber and Mooresville to Charlotte, not including Winston-Salem or Charlotte; Salisbury to Statesville inclusive: Points on Yadkin R. R. (formerly Southern): All points on Winston-Salem Southbound, Winston-	Points described in (9).....	29

Between—	And—	Minimum spread.
		<i>Cents.</i>
Salem to Wadesboro, not including Winston-Salem: Points on Norfolk Southern, Mount Gilead to Colon, not including Colon; Ashboro to Aberdeen, inclusive: Points on Seaboard Air Line, Aberdeen via Hamlet to Monroe, not including Monroe; Hamlet to Maxton inclusive; Hamlet to Gibson, inclusive: Points in North Carolina between Hamlet and Cheraw: Points on Atlantic Coast Line, Maxton to South Carolina state line; Wadesboro to South Carolina state line: Points on the Laurinburg & Southern, Laurinburg to Johns inclusive: All points on the Rockingham Railroad: Points on the Randolph & Cumberland, Cameron to Carthage, not including Cameron.		
(2f) Charlotte and points on the Seaboard Air Line, Charlotte via Monroe to South Carolina state line.	Points described in (9).....	38
Points described in (1a).....	(10) Points in the states of Alabama and Mississippi, except points on and north of the Southern from Chattanooga through Decatur and Corinth to the Tennessee state line; also except points the short-line workable routes to which from North Carolina points are via the Southern through Knoxville and Chattanooga; and points in Florida west of the Chattahoochee and Apalachicola rivers.	7
Points described in (1d).....	Points described in (10).....	13
Points described in (2d).....	Points described in (10).....	18
Points described in (2e).....	Points described in (10).....	23
Points described in (2f).....	Points described in (10).....	28
Points described in (1a).....	(11) Points in Georgia and Florida, other than those included in (5b), (9), and (13), on, east, or north of the following line: Seaboard Air Line, Columbus through Dawson to Albany; Atlantic Coast Line, Albany through Tifton and Waycross to and including Jacksonville, Fla.	8
(1e) All points in zone 1, as described in appendix to 57 I. C. C., 523, other than those described in (1a).	Points described in (11).....	16
(2g) Points in zone 2, as described in appendix to 57 I. C. C., 523, north of Charlotte, Norwood, Aberdeen, and Fayetteville, including points on the Atlantic Coast Line, Wilmington to Goldsboro, not including Wilmington; also including points on the Elberle and Jackson Springs branches of the Norfolk Southern.	Points described in (11).....	25
(2h) Points in zone 2, other than those described in (2g), and all points in North Carolina in zones 3 and 4, as described in the appendix to 57 I. C. C., 523.	Points described in (11).....	37
Points described in (1a).....	(12) Points in Georgia west or south of the line described in (11); and points in Florida east of the Chattahoochee and Apalachicola rivers, other than points included in (11).	7
Points described in (1e).....	Points described in (12).....	13
Points described in (2g).....	Points described in (12).....	18
Points described in (2h).....	Points described in (12).....	21
(5c) Points in zone 1 on the line of the Atlantic Coast Line south of Weldon to and including Goldsboro and points in zones 1, 2, 3, and 4 west of the line of the Atlantic Coast Line between Weldon and Wilmington and east of a line extending from Durham, N. C., to Raleigh, along the line of the Southern, thence along the line of the Norfolk Southern to Fayetteville, thence along the line of the Atlantic Coast Line through Pembroke to the South Carolina state line, excluding points on the Clinton branch of the Atlantic Coast Line and points on the Wilmington, Brunswick & Southern. (Zones 1, 2, 3, and 4 are as described in the appendix to 57 I. C. C., 523.)	(13) Points in Tennessee east of a line extending along the Cumberland River from the Kentucky state line to Nashville, Tenn.; thence along the main line of the Nashville, Chattanooga & St. Louis to the Alabama stateline, including Nashville and points on said mainline, and points in Alabama as follows: On the main line of the Southern west of Chattanooga, Tenn., to and including Decatur; on the Nashville, Chattanooga & St. Louis north of Stevenson and north or west of Bridgeport; also points south of the Tennessee River and east of the line of the Louisville & Nashville, Birmingham to Decatur, the short-line workable routes to which from North Carolina points are via the line of the Southern through Knoxville and Chattanooga.	5

Between—	And—	Minimum spread.
		<i>Cents.</i>
Points described in (5c).....	(14) Points in Tennessee west of the line described in (13); and points in Mississippi and Alabama (other than those included in 13), the short-line workable routes to which from North Carolina points are via the line of the Southern through Knoxville and Chattanooga; also points in Alabama and Mississippi as follows: On and north of the Southern west of Chattanooga through Decatur and Corinth to Middleton, Tenn., other than points included in (13).	4
(6) Points on or west of the Durham-Pembroke line described in (5c) to but not including Greensboro, Star, and Wadesboro.	Points described in (13).....	8
Points described in (6).....	Points described in (14).....	6
(7) Greensboro, Star, and Wadesboro and points west thereof in zones 1, 2, and 4, as described in appendix to 57 I. C. C., 523.	Points described in (13).....	15
Points described in (7).....	Points described in (14).....	12
(8) Points in zone 1 east of the line of the Atlantic Coast Line between Weldon and Goldsboro, and points in zone 2 on the line of the Atlantic Coast Line between Goldsboro and Wilmington, including points on the Clinton branch and points on the Wilmington, Brunswick & Southern. (Zones 1 and 2 are as described in the appendix to 57 I. C. C., 523).	Points in Tennessee.....	(1)

(1) Rates no higher than the rates contemporaneously maintained between Richmond or Norfolk, Va., and the same points in Tennessee.

We also find that the second paragraph following the table on page 77 of the report on further argument should be modified to read as follows:

We find that the rates on the other classes from and to the North Carolina points should be constructed by applying to the first-class rates so ascertained the same percentages of first class as are contemporaneously maintained, in the case of such other classes, with respect to rates from and to Richmond and Norfolk to and from the same points.

MILEAGE SCALE.

At page 77 of our report on further argument we said:

We further find that the establishment of rates based upon the differentials above outlined will not remove the entire undue prejudice existing with respect to rates between points in North Carolina and points in South Carolina and other states to the south and west as compared with rates between the Virginia cities and the same points, and that to remove this further discrimination, a mileage scale should be established covering both single-line and joint hauls for distances up to 200 miles to apply alternatively with the group rates resulting from the differentials herein suggested.

It is not possible, however, upon this record to prescribe such a scale, and the defendants will be expected within 60 days after the serving of this report to submit to us for consideration such a mileage scale so constructed as to harmonize with the group rates. Preferably conferences should be held by the defendants with the complainants and others interested in an effort to reach an agreement upon the scale to be adopted before submitting it to us.

In compliance with this finding, the defendant carriers have submitted to complainants and to us a tentative mileage scale, reproduced I. C. C.

duced in the appendix hereto. Conferences have been held, but complainants are not wholly satisfied with this proposed scale. They show that it is higher than the intrastate scales in North Carolina and South Carolina, and higher than some of the interstate scales applying to, from, and between points in the Carolinas. The defendants point out that the proposed scale is to apply only alternatively with the group rates resulting from the differentials herein prescribed, and that it is not higher than most of the interstate scales in southern territory and is lower than many.

We are of the opinion that the scale proposed by the defendants is not unreasonable for application alternatively with the group rates, except on classes A and B, which should not exceed 29 and 35 per cent, respectively, of first class. Manifestly it will be used only in connection with comparatively short hauls, for the group rates will be less for the longer hauls, in many cases materially less. Were the group rates to be abolished and a distance scale substituted for general application, undoubtedly a lower scale than the one suggested would be appropriate; but for alternative application only, on single-line hauls, the scale as submitted by the defendants meets with our approval. For joint hauls the rates should not exceed the corresponding rates for single-line hauls by amounts, in cents per 100 pounds, in excess of the following:

Classes.....	1	2	3	4	5	6	A	B	C	D
Differentials.....	12	10	9	8	6	5	3	4	3	3

THE NORTHERN ADJUSTMENT.

With respect to rates between points in North Carolina and eastern ports and interior points, the finding in our report on further argument, at pages 90 and 91, was as follows:

We therefore find that the class-rate adjustment attacked between eastern ports and interior eastern points, on the one hand, and Richmond, Norfolk, and points in North Carolina in zones 1 and 2, on the other, is unduly prejudicial to the North Carolina points and unduly preferential of Richmond and Norfolk (1) to the extent that the first-class all-rail rates to and from points in zone 1 exceed the corresponding rates to and from Richmond by more than 60 cents per 100 pounds; (2) to the extent that the first-class all-rail rates to and from points in zone 2 exceed the corresponding rates to and from Richmond by more than 72 cents per 100 pounds; (3) to the extent that the first-class water-and-rail rates between Baltimore and zone-1 points exceed the first-class all-water rates subject to our jurisdiction between Baltimore and Norfolk or Richmond by more than 60 cents per 100 pounds; (4) to the extent that the first-class water-and-rail rates between Baltimore and zone-2 points exceed the first-class all-water rates subject to our jurisdiction between Baltimore and Norfolk or Richmond by more than 72 cents per 100 pounds; (5) to the extent that the all-rail rates on classes other than first between eastern ports and interior eastern points, on the one hand, and points in zone 1, on the other, are greater than rates constructed by applying to the first-class rates, constructed in the manner prescribed in (1) above, the percentages of first class contemporaneously maintained with respect to the rates

between Richmond, on the one hand, and the same points in zone 1, on the other; (6) to the extent that the all-rail rates on classes other than first between eastern ports and interior eastern points, on the one hand, and points in zone 2, on the other, are greater than rates constructed by applying to the first-class rates, constructed in the manner prescribed in (2) above, the percentages of first class contemporaneously maintained with respect to the rates between Richmond, on the one hand, and the same points in zone 2, on the other; (7) to the extent that the water-and-rail rates on classes other than first between Baltimore and points in zone 1 are greater than rates constructed by applying to the first-class rates, constructed in the manner prescribed in (3) above, the percentages of first class contemporaneously maintained with respect to the rates between Norfolk or Richmond, on the one hand, and the same points in zone 1, on the other; and (8) to the extent that the water-and-rail rates between Baltimore and points in zone 2 are greater than rates constructed by applying to the first-class rates, constructed in the manner prescribed in (4) above, the percentages of first class contemporaneously maintained with respect to the rates between Norfolk or Richmond, on the one hand, and the same points in zone 2, on the other.

We also said, at page 91:

It is to be observed, as already indicated, that the relationships prescribed are maximum relationships and do not prevent the carriers from making the general adjustment more consistent by establishing narrower spreads where justified.

Upon further consideration, we are of the opinion that the above finding should be modified to read as follows:

We therefore find that the class-rate adjustment attacked between eastern ports and interior eastern points, on the one hand, and Richmond, Norfolk, and points in North Carolina in zones 1 and 2, on the other, is unduly prejudicial to the North Carolina points and unduly preferential of Richmond and Norfolk (1) to the extent that the all-rail rates to and from points in zone 1 exceed the corresponding rates to and from Richmond by more than the following amounts in cents per 100 pounds:

Classes.....	1	2	3	4	5	6	A	B	C	D
Differentials.....	60	52	46	38	31	26	17	21	16	14

(2) to the extent that the all-rail rates to and from points in zone 2 exceed the corresponding rates to and from Richmond by more than the following amounts in cents per 100 pounds:

Classes.....	1	2	3	4	5	6	A	B	C	D
Differentials.....	72	62	55	46	37	31	21	25	19	17

(3) to the extent that the water-and-rail rates between Baltimore and zone-1 points exceed the corresponding all-water rates subject to our jurisdiction between Baltimore and Norfolk or Richmond by more than the amounts in cents per 100 pounds specified in (1) above; and (4) to the extent that the water-and-rail rates between Baltimore and zone-2 points exceed the corresponding all-water rates subject to our jurisdiction between Baltimore and Norfolk or Richmond by more than the amounts in cents per 100 pounds specified in (2) above.

It should be understood that where the class rates to or from Richmond or Norfolk are subject to the southern classification, the differentials named should be used class for class in connection with the corresponding class rates to or from Richmond or Norfolk; but where the class rates to or from Richmond or Norfolk are subject to the official classification, the differentials on classes 1 to 6, inclusive,

should be used in connection with the corresponding class rates to or from Richmond or Norfolk and the differentials on classes A to D, inclusive, in connection with the sixth-class rates to or from Richmond or Norfolk.

It should further be understood that the differentials prescribed are to be held merely as maxima and that the actual differentials, in many cases, will fall below these maxima.

In all other respects the findings and conclusions of our report on further argument remain in full force and effect.

An appropriate order will be entered.

APPENDIX.

Suggested Alternative Scale, Southern Adjustment.

Classes.....	1	2	3	4	5	6	A	B	C	D
Class relation.....	100	86	76	64	52	43	35	40	27	24

Distance.	1	2	3	4	5	6	A	B	C	D
	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>
5 miles.....	35	30	27	22	18	15	12	14	9	8
10 miles.....	39	34	30	25	20	17	14	16	11	9
15 miles.....	43	37	33	28	22	18	15	17	12	10
20 miles.....	47	40	36	30	24	20	16	19	13	11
25 miles.....	51	44	39	33	27	22	18	20	14	12
30 miles.....	54	46	41	35	28	23	19	22	15	13
35 miles.....	57	49	43	36	30	25	20	23	15	14
40 miles.....	60	52	46	38	31	26	21	24	16	14
45 miles.....	63	54	48	40	33	27	22	25	17	15
50 miles.....	66	57	50	42	34	28	23	26	18	16
55 miles.....	69	59	52	44	36	30	24	28	19	17
60 miles.....	71	61	54	45	37	31	25	28	19	17
65 miles.....	74	64	56	47	38	32	26	30	20	18
70 miles.....	76	65	58	49	40	33	27	30	21	18
75 miles.....	79	68	60	51	41	34	28	32	21	19
80 miles.....	81	70	62	52	42	35	28	32	22	19
85 miles.....	84	72	64	54	44	36	29	34	23	20
90 miles.....	86	74	65	55	45	37	30	34	23	21
95 miles.....	89	77	68	57	46	38	31	36	24	21
100 miles.....	91	78	69	58	47	39	32	36	25	22
110 miles.....	95	82	72	61	49	41	33	38	26	23
120 miles.....	99	85	75	63	51	43	35	40	27	24
130 miles.....	103	89	78	66	54	44	36	41	28	25
140 miles.....	107	92	81	68	56	46	37	43	29	26
150 miles.....	111	95	84	71	58	48	39	44	30	27
160 miles.....	114	98	87	73	59	49	40	46	31	27
170 miles.....	117	101	89	75	61	50	41	47	32	28
180 miles.....	120	103	91	77	62	52	42	48	32	29
190 miles.....	123	106	93	79	64	53	43	49	33	30
200 miles.....	126	108	96	81	66	54	44	50	34	30

No. 11317.¹

ILLINOIS BRICK COMPANY ET AL.

v.

DIRECTOR GENERAL, AS AGENT, PENNSYLVANIA
RAILROAD COMPANY, WESTERN LINES, ET AL.

Submitted May 13, 1921. Decided October 27, 1921.

1. Rates on common brick from points outside the Chicago switching district to points within said district found not unreasonable but unduly prejudicial. Nonprejudicial basis of interstate rates prescribed for the future. Reparation denied.
2. Practice of certain defendants of refusing to absorb switching charges on shipments of common brick from Glen View and Deerfield, Ill., to certain points in the Chicago district found not unlawful.

A. R. Miller, R. W. Ropiequet, E. B. Wilkinson, Robert J. McBride, Felsenthal, Struckmann & Berger, Felsenthal, Wilson & Struckmann, and Gallagher, Kohlsaat & Rinaker for various complainants.

C. A. Shank for intervener in No. 10749.

Guernsey Orcutt, K. L. Richmond, O. W. Dynes, L. P. Day, R. H. Widdicombe, H. D. Sheean, John F. Finerty, and Fred W. Heid for various defendants.

Royal McKenna and John F. Finerty for Director General of Railroads.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS DANIELS, ESCH, AND CAMPBELL.

BY DIVISION 2:

These cases were separately heard, and proposed reports were served upon the parties. Exceptions were filed in each proceeding by one or more of the parties, and Nos. 11314, 11317, and 11395 were orally argued. On account of the similarity of the issues involved they will be disposed of in one report.

The complainants, who manufacture brick at or near Chicago, Ill., allege that the rate of 70 cents per net ton charged during certain

¹ This report also embraces No. 11395, Gary Sand-Lime Brick Company v. Director General, as Agent, Atchison, Topeka & Santa Fe Railway Company, et al.; No. 11314, Builders Brick Company et al. v. Director General, as Agent, Atchison, Topeka & Santa Fe Railway Company, et al.; and No. 10749, Lutter Brick Company v. Director General, as Agent, and Chicago, Milwaukee & St. Paul Railway Company.

periods since June 25, 1918, on carload shipments of common brick from various points located at short distances outside of the Chicago switching district to points within that district was unreasonable, unjustly discriminatory, and unduly prejudicial. We are asked to award reparation and to establish reasonable and nonprejudicial rates for the future. Except under circumstances not here present, our jurisdiction over intrastate rates is limited to the period of federal control. The complainant in No. 11314 also asks for our approval of reductions in intrastate rates from Chicago Heights, Ill., to Illinois points within the Chicago district, but the period provided by section 208 (a) of the transportation act, 1920, for our exercise of such power has now expired. Except where otherwise indicated, rates will be stated in amounts per net ton, and do not include the general increases of 1920.

The points of origin are Bernice, Lansing, Chicago Heights, and Glen View, Ill., and Maynard and Millers, Ind. The Chicago switching district lies principally in Illinois, but the southeastern portion extends into the state of Indiana. The points of origin are located on the lines of various defendant carriers at distances outside of the Chicago switching district which vary from 1.5 miles at Bernice to 10 miles at Millers. Thirteen brick-manufacturing plants, including many which are owned by certain of the complainants herein, are located at various points throughout the district. Certain of these plants are near its outer edge. Representative of these points are Blue Island, Riverdale, and Weber, Ill., the distances from which to many competitive destinations are approximately the same as from one or another of the points herein involved. Three of the plants within the district are so-called team yards, whose product undergoes no railroad transportation but is delivered exclusively by team or truck. Other brick plants are located at short distances outside of the switching district, including that of the National Brick Company, joint complainant in No. 11317 and intervener in No. 10749, at Deerfield, Ill., 6.7 miles north of Glen View. Brick is sold at a delivered price, the manufacturer paying the freight and cartage charges to the building operations where the brick is used. The plants within and without the district compete with each other for business in the Chicago market. The principal competitors of the Glen View plant are the plants at Weber and Deerfield, and the most important competition of the plants outside the district on the south seems to come from Blue Island and Riverdale.

Prior to June 25, 1918, the rates for single-line hauls to points within the switching district were 30 cents from Glen View and Deerfield, and 25 cents from Bernice, Lansing, Chicago Heights,

Maynard, and Millers, except that for a short time prior to that date the rate from Maynard was 29 cents. Contemporaneously the rate between points in the district was generally 25 cents. On June 25, 1918, rates on common brick, including those within the switching district, were increased 2 cents per 100 pounds, or 40 cents per ton, and under the rule for the disposition of fractions, became generally 70 cents from all of these points to destinations within the district. On November 8, 1918, under freight rate authority No. 1887, of the director of traffic, United States Railroad Administration, the switching district rate was reduced to 30 cents intrastate and 40 cents interstate, but the rate from points outside the switching district to points within, state and interstate, was continued at 70 cents. This destroyed the general parity prevailing as to most of the points of origin prior to June 25, 1918, and is the cause of these complaints, the contention being that the 70-cent rate was unreasonable to the extent that it exceeded the 30-cent and 40-cent rates prevailing within the district. Some of the complainants contend that the rate was unreasonable from the date of the reduction of the switching-district rates, others that it was unreasonable from June 25, 1918, and their claims for reparation are laid accordingly. The defendants contend that the 70-cent rate was not unreasonable either from points within or without the district, and that if undue prejudice exists it is because of the unduly low basis of the subsequent reductions within the district.

The weighted average one-line haul of shipments from Bernice, Lansing, and Maynard from June 25, 1918, to February 29, 1920, was 19 miles. Complainants contrast the rate of 70 cents with the 30-cent rate from Blue Island and Riverdale for an average distance of 20 miles. They also show by way of comparison rates of 30 cents on hollow building tile, a strong competitor of brick and a higher priced commodity, and 40 cents on pianos, organs, bottles, acids, lockers, and iron and steel articles from Chicago Heights to points within the switching district, a distance of about 30 miles; 70 cents on hollow building tile from Kankakee, Ill., to Chicago, 54 miles; 50 cents on sand and gravel from Libertyville, Ill., to Chicago, 35 miles; and 55 cents on the same commodity from Milwaukee, Wis., to Chicago, 85 miles. It is contended that sand and brick are analogous or competitive. Complainants also stress the fact that prior to June 25, 1918, the brick rates were practically equalized in all important cases from points inside and outside the district.

Defendants compare the rates assailed with rates on common brick in various parts of the country for hauls of from 2 miles to 33 miles at rates ranging from 80 cents to \$1.30 and with rates under the Illinois distance tariff higher than the rates complained of. Com-

parison is also made of the 70-cent rate from Chicago Heights for 27 miles with the Chicago & Eastern Illinois rate of 80 cents on brick other than common brick, also hollow building tile, between the same points, and with numerous rates on brick ranging from 70 cents to \$1.10 for distances of from 3 miles to 50 miles on the Chicago & Eastern Illinois in Illinois and Indiana, all of which apparently reflect the flat increase of 40 cents. Exhibits were also introduced by defendants showing line-haul rates on common brick from nine different producing points in Ohio and Pennsylvania for short hauls to a large number of destinations in Ohio, Pennsylvania, and Michigan, these rates ranging from 90 cents to \$2.10 for an average distance of approximately 38 miles.

Calculations were submitted by various defendants purporting to show the approximate cost of the service rendered under the rate assailed. One cost study applies to cars actually moving from Bernice and Maynard during the period from June 25, 1918, to February 29, 1920. The figures do not include all items of cost but only such as can be allocated to this service with some degree of certainty. They cover only terminal costs at point of origin and at and beyond the classification yard in the switching district, nothing being added for the line haul. The combined terminal cost thus obtained is 40.5 cents per ton, which, because of the omissions mentioned, is estimated to represent only about 85 per cent of the total cost. By the application of this percentage approximately 47.5 cents is obtained as the cost per ton of the transportation service, without applying an operating ratio.

A cost study of typical shipments by the Chicago & Eastern Illinois from Chicago Heights to points in the switching district purports to show a cost of from \$21.26 to \$38.47 per car, while the freight charges range only from \$22.40 to \$35.47 per car. A second study, based on a statistical analysis of the Chicago & Eastern Illinois for the calendar year 1919, purports to show the cost of moving a car of 35 net tons of brick from Chicago Heights to a point on the Chicago & Eastern Illinois in the switching district to be \$25.37, while the freight charges on the shipment would be only \$24.50. A cost study of all traffic of the Baltimore & Ohio Chicago Terminal for the calendar year 1919, including 6 per cent on the book value of its property, purports to show an average cost of 68.7 cents per net ton, compared with the average revenue of this line for all freight of only 30 cents per net ton. Another cost study for this line purports to show a cost for moving brick from Chicago Heights of from \$21.36 to \$30.28 per car.

No comparison was offered of the relative costs of moving brick from brick plants within the switching district. The complainants

criticize the studies submitted as being based largely upon assumptions. Making all necessary allowances, it seems reasonably certain that a rate of 30 cents would be considerably less than the actual out-of-pocket cost.

Although pressing the allegation of intrinsic unreasonableness, the principal grievance which is sought to be corrected is the manifest injustice of the spread of 40 cents, in most cases, which exists in favor of the points within and against the points outside, to Chicago district destinations. Chicago is the principal market for the product of the complainants, and the present advantage in freight rate which is enjoyed by the plants within the district over those outside is obvious. The latter claim that they must shrink their profits accordingly by equalizing their preferred competitors' rates. But it is also true that complainants are in competition with other plants in Chicago which are at no expense at all for freight transportation, making deliveries direct from their plants.

The records are clear that it was the intention of the Railroad Administration to apply the flat increases, where such were specifically provided, to line-haul rates generally throughout the country, including hauls complete within themselves from shipper to consignee between two points within the switching limits of a city or district. But the interpretation of general order No. 28 was not always uniform as to complete hauls when entirely within a district, and in some cases and on some commodities the general 25 per cent increase was applied to the existing rate. The purposes of the flat increases, as stated by defendants, were, first, to maintain relationships between different points of production; and, second, to apply to short hauls an increase which would be larger in proportion than that applying to the longer hauls, because it was a matter of common knowledge that a great many of the short-haul rates, not only on brick but on other low-grade commodities, were so low as to be less than the actual cost and less than their fair share of transporting traffic as a whole. As long as the flat increase on brick was applied both inside and outside of the Chicago district no serious maladjustment arose. But the increase on some of the commodities taking the flat advance, when applied to industrial switching, had the effect of making extraordinarily high charges on interterminal, intraterminal, and intraplant switching where large stocks had been accumulated at the request of the War Industries Board. To meet this situation the rates were reduced by the director of traffic to the basis of 25 per cent above the former switching rates, consistently with the increase in switching charges not covered by the flat increases, and in consequence of the new adjustment the brick interests outside of the Chicago district, whose principal competition is not with plants

having line-haul rates but switching-district rates found themselves discriminated against.

Defendants maintain that if the prayer of complainants is granted it will amount virtually to an extension of the Chicago switching district over an additional zone of 10 miles, that other commodities just outside the present limits can present as meritorious a case for inclusion within the district as the brick interests do herein, and that there will be no limit to the boundary, already distended, within which Chicago rates should apply. Complainants reply that they are only asking for the restoration of a parity which formerly existed, and that on a commodity such as brick in which the freight cost is such a material factor, the existing difference in the freight rate, inside and outside the district, will result in the loss to them of their most important market.

The situation is not unlike that arising in connection with the delimitation of rate groups. The line must be drawn somewhere. So here the limits of the switching district determined under the Lowrey tariffs many years ago as the result of prolonged conference and negotiation between carriers and shippers, should not be reconstructed by us on the record now before us.

In *Vaughan's Seed Store v. C., M. & St. P. Ry. Co.*, 59 I. C. C., 537, the complainant, located at Morton Grove, Ill., a point on the Chicago, Milwaukee & St. Paul, hereinafter called the Milwaukee, 14.3 miles north of Chicago, and intermediate to Glen View but outside of the Chicago switching district, complained that the rates on onion sets from Morton Grove to certain points east of Chicago were unduly prejudicial to the extent that they exceeded the Chicago district rates to the same destinations which were enjoyed by complainant's competitor at Des Plaines, Ill., a point on the Chicago & North Western, 16.6 miles from Chicago but within the switching district. Morton Grove and Des Plaines are about 6 miles apart, and connected only by wagon road. In dismissing the case we said:

The different bases of rates applicable from Morton Grove and Des Plaines are due primarily to the inclusion of the latter and the noninclusion of the former within the Chicago switching district, and defendants urge that the limits of this district should not be extended beyond the extremity of the manufacturing district to include Morton Grove. It was testified on their behalf that onion sets are not produced to a material extent within the switching district or at any point on the Milwaukee within that district, and that if the Chicago basis of rates is applied to this commodity from Morton Grove, the outbound traffic from which consists of farm or market-garden products, in all probability demand would be promptly made for the same rate basis on onion sets and other garden produce from points farther distant.

In the present case the principle involved is much the same, except that considering the nature of the commodity, we are convinced that the spread between the rates within and without the district

which existed after the reduction of the rates following freight rate authority No. 1887 should not have exceeded 10 cents per net ton, and should not now exceed this amount so far as interstate rates are concerned.

Since the hearings herein the general increases authorized by us on August 26, 1920, have become effective, so that the rates in effect at the present time are those herein dealt with plus 40 per cent. Necessarily no comparisons of existing rates are contained in the records.

In No. 10749 it is also alleged that the rate of 80 cents charged on and after June 25, 1918, on shipments of common brick from Glen View to Evanston, Ill., were unjust, unreasonable, and unduly prejudicial; also that the failure of defendants to provide for the absorption of switching charges on shipments of common brick from Glen View to points within the Chicago switching district on lines other than the Milwaukee, when the line-haul rate is 50 cents (2.5 cents per 100 pounds) or more, minimum charge \$15 per car, subjects complainant and its commodity to undue prejudice and unduly prefers the commodities on which such absorptions are made.

Evanston is 25 miles from Glen View by the single line of the Milwaukee, and the haul is through the center of Chicago. Complainant's principal competition at Evanston comes from Weber, from which point to Evanston the rate is 30 cents, but there is testimony to the effect that the movement for the short distance is wholly by truck.

The other question presented is whether the complainant and intervener in this proceeding are entitled to the benefit of a switching absorption out of the line-haul rate on Chicago deliveries. The Lowrey tariff, series 20, adopted in 1911 by the various carriers entering Chicago, provided, with certain exceptions, for the delivery of carload shipments from points beyond to points within the switching district on lines other than the line-haul carrier without charge in addition to the line-haul rates to Chicago, where the line-haul rate was 2.5 cents per 100 pounds or more and the freight charges were \$15 per car or more. The Milwaukee makes an exception as to brick from Deerfield, Glen View, and Shermerville, Ill., the last point being a brick-manufacturing point intermediate to the other two.

A witness for the Milwaukee testified that in establishing the \$15 minimum charge for shipments on which switching charges would be absorbed, this amount was fixed in contemplation of traffic which ordinarily carries a much higher revenue. It was explained that if an exception were not made from the last three mentioned points, the Milwaukee in most cases would not receive enough gross revenue from such shipments to pay the terminal costs accruing to other lines.

We have several times recognized the propriety of the action of various carriers reaching Chicago in excepting certain commodities and classes of traffic from the provisions of the Lowrey tariff. *Rates on Hay to Chicago*, 34 I. C. C., 150, and cases therein cited.

We find that the rates under attack were not and are not unreasonable, but that they were, are, and for the future will be unduly prejudicial to the extent that the rates from the points outside of the Chicago district exceed the rates from points inside of that district to interstate destinations therein by more than 10 cents per net ton. Complainants and intervener have not shown themselves entitled to damages as a result of such undue prejudice. We further find that the failure of defendants in No. 10749 to provide for the absorption of switching charges to points in the Chicago switching district on lines other than the St. Paul was not unlawful during federal control and is not unlawful as to interstate traffic.

An appropriate order will be entered.

64 I. C. C.

No. 10122.

STANDARD TIME ZONE INVESTIGATION.

Submitted September 29, 1921. Decided November 7, 1921.

Orders defining limits of United States standard eastern and central time zones, 51 I. C. C., 273, and 53 I. C. C., 208, modified in part.

H. B. Stewart for Akron, Canton & Youngstown Railway Company.

SIXTH SUPPLEMENTAL REPORT OF THE COMMISSION.

AITCHISON, Commissioner:

The boundary between the United States standard eastern and central time zones as defined by us excludes that portion of the Northern Ohio Railway between Plymouth and Akron, Ohio, from the eastern and includes it within the central time zone. 51 I. C. C., 273, 289, 295; 53 I. C. C., 208, 211. The Akron, Canton & Youngstown Railway Company, whose line is located wholly within the eastern time zone, and which now operates the Northern Ohio under lease, petitions for a modification of our orders in this case so as to permit the operation of both roads under a single standard of time, either eastern or central, or if that be not granted, so as to permit the change of time at either Carey or New London, Ohio. Petitioner's preference is indicated as being in the order stated.

On the effective date of the original order, January 1, 1919, the Northern Ohio extended east from Delphos, Ohio, to Akron, a distance of 162 miles. It was then operated by the Lake Erie & Western Railroad Company. The latter carrier did not avail itself of the authority given to carry central time to Akron and adopted standard eastern time east of Plymouth and standard central time west thereof. Plymouth, which is 93 miles east of Delphos and 69 miles west of Akron, still remains the time-breaking point on the Northern Ohio. The Akron, Canton & Youngstown commenced operation of the Northern Ohio on March 1, 1920, at which time its line extended approximately 8 miles westerly from Mogadore, Ohio, to Akron. Shortly thereafter it petitioned us for authority to operate the entire line of the Northern Ohio under standard eastern time in order to harmonize with the standard of time used on its own line. This was denied, as was a similar petition presented by it in June, 1920.

The Northern Ohio does not now extend into Akron, but connects with the Akron, Canton & Youngstown at Copley, Ohio, 9 miles west of Akron. The two lines constitute one system, and, for operating purposes, have been divided into two districts, the first, west of Plymouth to Delphos, and the second, east of Plymouth to Mogadore. Effective September 5, 1921, because the volume of traffic and local work necessitated shortening the length of local freight runs, the lines were divided into three districts, the first from Delphos to Carey, the second from Carey to New London, and the third from New London to Mogadore. Carey is 38 miles west and New London is 16 miles east of Plymouth, which is now eliminated as a freight terminal.

Petitioner's request for authority to carry a single standard of time over both entire lines for operating purposes presents the same questions as were involved in the previous requests which we denied. No new facts are here shown warranting a different conclusion in this regard. There remains the request for authority to change time at Carey or New London. The statute provides that the limits of the several zones shall be defined by our order,

having regard for the convenience of commerce and the existing junction and division points of common carriers * * *, and such order may be modified from time to time.

New London is closer to the zone boundary than is Carey. Considering the relative situations of the two places with respect to other railroad junction and division points, New London is the more favorably located as a time-breaking point.

Upon a further consideration of the record and of the facts now before us, we are of opinion and find that the greater convenience of commerce will be served and the intent of our previous orders better effected by modifying our previous reports and orders herein so as to include only that portion of the Northern Ohio Railway west of New London within the United States standard central time zone, and to include all portions of that railway east thereof in the United States standard eastern time zone.

In granting permission to the Akron, Canton & Youngstown to carry standard central time on the Northern Ohio from Plymouth to New London for operating purposes, we do so upon petitioner's expressed undertaking to show in its published advertisements, its time cards intended for public use, bulletin boards in stations, and in other like ways, the arrival and departure of trains between those stations with reference to standard eastern time.

An appropriate order will be entered.

INVESTIGATION AND SUSPENSION DOCKET No. 1353.
 CANCELLATION OF HEATER SERVICE FOR FRESH
 FRUITS AND VEGETABLES.

Submitted September 1, 1921. Decided October 22, 1921.

Proposed rule eliminating the state of Illinois, and that portion of the state of Indiana lying within the Chicago switching district, from the territory in which carriers' protective service against cold is now available under section 5 of perishable protective tariff No. 1, agent Fairbanks' I. C. C. No. 6, and withdrawing such service on traffic originating outside the present so-called cold-weather zone when destined to certain named states, or to points beyond such states, found not justified. Suspended schedules ordered canceled.

T. J. Norton, J. L. Coleman, F. E. Andrews, and E. S. Briggs for respondents.

Fayette B. Dow, O. W. Tong, C. E. Weldren, R. Cumming, and J. P. Haynes for protestants.

Butler, Lamb, Foster & Pope and *Karl D. Loos* for California Citrus League.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND COX.

BY DIVISION 3:

By schedules filed to become effective July 1, 1921, respondents proposed the following exceptions to the application of perishable protective tariff No. 1, agent Fairbanks' I. C. C. No. 6:

EXCEPTION: Will not be applicable on traffic having origin at a point outside of the territory covered by the charges shown in tables of charges in Section 5 of the tariff or as amended when destined to points in the states of Utah, Wyoming, Colorado, Kansas, Nebraska, Missouri, Iowa and Illinois, or to points in the states named when destined to points beyond such states.

EXCEPTION: Will not be applicable on traffic having both origin and destination at points in Illinois, also covering that portion of the haul between Illinois points on shipments originating at or destined beyond Illinois points, including points in Indiana in the Chicago switching district, as defined in Agent Lowry's Tariff No. 20-K, I. C. C. No. 45, supplements thereto or reissues thereof; on traffic to and from St. Louis, Mo., when originating at or destined to points in the State of Illinois, including points in Indiana in the Chicago switching district, and for that portion of the journey through Illinois, including points in Indiana in the Chicago switching district, as defined in Agent Lowry's Tariff No. 20-K, I. C. C. No. 45, supplements thereto or reissues thereof, on business originating at or destined beyond.

Upon protest of various associations of fruit and vegetable shippers, the schedules were suspended until November 28, 1921. The California Citrus League, hereinafter called the Citrus League, favors the first exception, but has no interest in and takes no position with respect to the second exception. The two exceptions will be considered separately.

Perishable freight tariff No. 1, which was made effective February 28, 1920, by the Director General of Railroads, authorizes protective service against cold on all traffic requiring such service. This service is authorized during the period from October 15 to April 15, and in two forms, one known as "shipper's protective service," or option No. 1, the other as "carriers' protective service," or option No. 2. Under the former the shipper is required to equip the car with whatever special facilities, such as lining, floor racks, stoves, fuel, etc., may be needed, and, with certain exceptions, to furnish a caretaker if a stove is installed. Under the latter, for which a stated charge is made, the carriers furnish artificial heat when required. This carriers' protective service is available on traffic moving between points in Oregon, Washington, Idaho, Utah, Montana, Wyoming, Colorado, North Dakota, South Dakota, Nebraska, Kansas, Minnesota, Iowa, Missouri, Illinois, the upper peninsula of Michigan, and that portion of Indiana which is included within the Chicago switching district. On traffic originating at or destined to points outside the territory thus described, the carriers' protective service is furnished, if desired, from the first point from which charges for such service are published.

FIRST EXCEPTION.

By this exception it is proposed to make the provisions of perishable protective tariff No. 1, relating to protective service against cold, inapplicable on traffic originating outside the territory from which the carriers' protective service is now available and moving through it to certain destination territory beyond. In other words, traffic originating in other states where the climate is milder, and moving through the above-named states to points beyond, will not enjoy protective service against cold. For example, on fruit from California moving to Nebraska via Ogden, Utah, protective service would be denied; on fruit originating at Ogden and moving to the same destination such service would be available.

This exception was published at the request of the Union Pacific, Chicago, Rock Island & Pacific, and Atchison, Topeka & Santa Fe, which, it is said, are handicapped in competing with the Southern Pacific on traffic from California to points east of the Indiana-Illinois state line, because the latter offers a route, via New Orleans

and the Ohio River crossings, which is outside of the so-called heater zone, with no charge for protection against cold. The Union Pacific has been principally affected because its California traffic, which enters the heater zone at the Utah-Nevada state line, was originally subject to a charge of 8 cents per 100 pounds for carriers' protective service to Chicago, whereas, from the states of Missouri and Kansas, where the lines of the Rock Island and Santa Fe reach the heater zone, the charges for carriers' protective service were 5 and 6 cents per 100 pounds, respectively. The charge from all three states later became 5 cents for competitive reasons.

At the hearing respondents stated that this exception was broader than was intended, and that it had been originally designed to deal only with the competitive situation affecting traffic from California. They therefore suggested a substitute exception which would apply only on traffic originating at points in California, New Mexico, and Arizona. Even as thus modified, the exceptions would seem to be broader than the exigencies of carrier competition alone would require, because all shipments destined to points in the so-called heater zone from California are now subjected to an additional charge for carriers' protective service as soon as they enter the zone, even though they move over the southern route.

Prior to February 28, 1920, when perishable protective tariff No. 1 became effective, there was no tariff provision authorizing protective service in transit from California points when destined to the territory lying south of the Dakotas and Minnesota and extending east from the Rocky Mountains to the Atlantic seaboard. The principal commodities shipped from California which are subject to damage from cold are citrus fruits, apples, potatoes, onions and other vegetables, and canned goods. Of these, citrus fruits move in the largest volume, the usual annual movement being upward of 50,000 cars. *California Citrus League v. Director General*, 58 I. C. C., 373, 383. Shipments during the cold-weather period of 1920-21 numbered 26,272 cars.

About 90 per cent of the shipments of citrus fruits from California and Arizona are sold delivered, the consignor paying all transportation charges and assuming all risk of damage or loss in transit. Such shipments as are sold f. o. b. points of origin move mainly to the territory west of the Rocky Mountains and to Montana, North Dakota, South Dakota, and Minnesota.

Witnesses for the Citrus League testified that heaters for shipments of citrus fruits need be furnished only during exceptionally cold weather. The fruit is picked and packed in a temperature from 15 to 25 degrees above freezing and hauled through the desert for several days before cold weather is encountered. If loaded in

refrigerator cars equipped with floor racks it will withstand external temperatures as low as 12 degrees below zero without harm. When cars are stopped at reconsigning points or at final destinations for diversion orders, where the doors are usually opened for inspection of the fruit, it is generally agreed that heater service is necessary. Prior to February 28, 1920, this service was provided at certain hold and destination points at a charge of \$2 per car. The Citrus League desires restoration of this service in case the exception here considered is permitted to become effective, and respondents have expressed their willingness to reestablish it. Respondents do not state definitely that they will voluntarily provide such service where necessary to prevent damage from cold in case the suspended schedules are permitted to go into effect, though they intimate that possibly they would be compelled to do so because of the more favorable climatic conditions along the southern route. The Citrus League opposes the two existing forms of protective service on the ground that under shipper's protective service the shipper is forced to assume an undue amount of risk, while carriers' protective service is nothing more than an imposition of an insurance charge of about \$20 per car against hazard of freezing, which is relatively small. In this connection it points out that the cost of carriers' protective service, if used on all shipments last season, would have been in excess of \$520,000.

During 1920-21 the California Fruit Growers' Exchange used carriers' protective service on but 217 cars, and, contrary to its previous practice, routed a large number of its shipments over the southern route via Memphis and Cincinnati in order to avoid paying for such service. Other important shippers of citrus fruits from California concur in the request that the first exception be permitted to go into effect.

The continuance of carriers' protective service for apples and potatoes, onions, and other vegetables shipped eastward from California is urged by numerous dealers in those commodities, and the record indicates that artificial heat may perhaps be more desirable for vegetables than it is for citrus fruits. Several dealers express themselves as favoring protective service for citrus fruits, which they purchase to some extent f. o. b. point of origin from independent growers, as well as delivered from members of the Citrus League. It is impossible to estimate from the record the percentage of f. o. b. shipments which move under carriers' protective service. One firm, which has houses at various points in Iowa, used it last season on 18 out of 52 cars. Another used it on 3 or 4 out of 33 cars. Protestants' testimony is generally corroborative of that offered by the Citrus League to the effect that damage to citrus fruits from freezing is comparatively infrequent.

On brief, the Citrus League asks that, if the modified exception is found not to have been justified, publication of a special exception applying only to citrus fruits from California, Arizona, and New Mexico be authorized. Such an exception would leave the present provisions of the tariff applicable to citrus fruits moving from Florida to the heater zone, creating a situation which might conceivably be unsatisfactory to Florida shippers. On the other hand, respondents might, as suggested on brief by counsel for protestants, as an additional option, restore the arrangements in effect prior to February 28, 1920. This third option would apparently satisfy the Citrus League, and at the same time would not deny the carriers' protective service to any shipper desiring it.

SECOND EXCEPTION.

This exception, which would eliminate the state of Illinois from the territory in which carriers' protective service against cold is now obtainable, appears to have been published solely at the instance of the Toledo, St. Louis & Western. When its publication was contemplated the other Illinois lines made no objection, but at the hearing it was stated that the Illinois Central, the Chicago & North Western, and the Chicago, Burlington & Quincy are in favor of continuing the present service. Representatives of the Atchison, Topeka & Santa Fe and the Chicago, Rock Island & Pacific said that they had no objection to furnishing carriers' protective service on their lines in Illinois.

An official of the Toledo, St. Louis & Western testified that the provisions of perishable protective tariff No. 1 had been made applicable to that line without its knowledge or consent, that its mileage in Illinois was only 182 miles, that on the greater portion of its line it was not required to furnish heater service, and that it owned no heaters and did not feel justified in buying any because of its straitened financial condition and the small volume of traffic requiring protection.

Numerous shippers appeared in opposition to the second exception, testifying as to the value of the carriers' protective service now being provided and urging that it be extended rather than restricted. It was shown that 90 per cent of the potatoes shipped from Wisconsin under heat, or approximately 20,000 carloads a year, and about 70 per cent of those from Minnesota, must pass into or through Illinois. The elimination of Illinois from the heater zone, while working a hardship to potato shippers in both Wisconsin and Minnesota, would particularly handicap those of the former state, since much of the Minnesota traffic could be routed through Iowa and Missouri, where the service would still be available. It is pointed

out that the Toledo, St. Louis & Western since 1914 has been a party to other tariffs obligating it to furnish carriers' protective service on certain traffic.

The record discloses no valid reason in support of the second exception as applied either to the Illinois lines as a whole or to the Toledo, St. Louis & Western individually. Should this exception be permitted to go into effect the extension of carriers' protective service against cold to central and eastern territory, which was contemplated when perishable protective tariff No. 1 was originally proposed and strongly urged by us in our report in *Perishable Freight Investigation*, 56 I. C. C., 449, would be extremely unlikely. The value of this service to the shipper in insuring against loss and damage, to the carrier in stimulating traffic, and to the nation in conserving the food supply, makes it imperative that no individual railroad be permitted to hinder its further development.

We find that respondents have failed to justify the schedules under suspension, and an order will be entered requiring their cancellation.

No. 11462.

LIBERTY OIL COMPANY, LIMITED,

v.

DIRECTOR GENERAL, AS AGENT, AND TRINITY & BRAZOS
VALLEY RAILWAY COMPANY.

Submitted June 6, 1921. Decided October 15, 1921.

Rates on crude petroleum, in tank-car loads, from Iowa Park, Tex., to New Orleans, La., found not unreasonable. Complainant not shown to have been damaged by any undue prejudice which may have existed. Complaint dismissed.

W. M. Barrow for complainant.

F. L. Wallace and *John T. Bowe* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

By DIVISION 3:

Exceptions were filed by complainants to the report proposed by the examiner.

Complainant, a corporation engaged in the oil business at New Orleans, La., by complaint filed May 11, 1920, alleges that the rates charged on 479 tank-car loads of crude petroleum shipped from Iowa Park, Tex., to New Orleans, from April 26, 1918, to January 29, 1919, were unreasonable, unjustly discriminatory, and unduly prejudicial. The prayer is for reparation only. Rates will be stated in cents per 100 pounds.

Iowa Park is on the Fort Worth & Denver City, 11 miles northwest of Wichita Falls, Tex. The shipments moved as routed by complainant over five different routes and charges were collected at the applicable combination rates which varied according to the time and route of movement as shown in the table on page 290.

The rates over route No. 4 were slightly lower than those over the other routes. They were 22.5 cents prior to June 25, 1918, 28.5 cents from June 25 to July 31, 1918, inclusive, and 27 cents from August 1, 1918, to January 29, 1919, inclusive. Complainant forwarded only six shipments over this route, most of the shipments moving over routes considerably longer. Prior to the movement complainant

was informed that the combination rate of 22.5 cents would apply on shipments moving through Fort Worth and Houston, and charges on a number of shipments were originally collected at that rate. Undercharge bills were subsequently rendered and paid. It is not clear whether complainant selected the longer and higher-rated routes because of this erroneous information or because of the congestion and terminal difficulties encountered over route No. 4.

Movement period.	Number of cars.	Average weight.	Distance and route.	Rate charged.	Rate asked.	Ton-mile revenue.	Car-mile revenue.
		<i>Pounds.</i>	<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Mills.</i>	<i>Cents.</i>
April 26 to June 24, 1918.	74	73,817	1753	² 24.5	17.5	6.5	24.05
Do.	5	68,885	1788	² 24.5	17.5	6.2	17.18
June 25 to July 31, 1918.	80	71,351	1753	² 30.5	22	8.1	21.44
August 1, 1918, to January 29, 1919	26	72,022	1881	⁵ 29	22	4.4	15.31
Do.	6	59,612	1667	⁵ 27	22	8.1	28.94
Do.	287	70,879	1753	² 29	22	5.8	20.87
Do.	1	75,206	1653	² 29	22	6.6	23.73
						5	18
						8.1	24.06
						6.5	19.6
						7.7	27.33
						5.8	20.73
						8.8	33.29
						6.7	25.26

¹ Route No. 1: F. W. & D. C., Fort Worth, T. & B. V., Houston, Gulf Coast Lines.

² Fort Worth combination.

³ Route No. 2: F. W. & D. C., Fort Worth, I & G. N., Houston, Gulf Coast Lines.

⁴ Route No. 3: F. W. & D. C., Wichita Falls, M. K. & T. of T., Houston, Gulf Coast Lines.

⁵ Wichita Falls combination.

⁶ Route No. 4: F. W. & D. C., Wichita Falls, M. K. & T. of T., Shreveport, L. R. & N.

⁷ Route No. 5: F. W. & D. C., Fort Worth, T. & F.

It appears that prior to federal control the Gulf Coast Lines, as the delivering carrier, agreed to establish a rate of 17.5 cents from Iowa Park. On February 1, 1919, subsequent to the shipments, a rate of 22 cents was established from Iowa Park and other stations in the vicinity of Wichita Falls to New Orleans over the routes of movement and over other available routes. Complainant asks reparation to the basis of the latter rate on shipments made on and after June 25, 1918, and to the basis of a rate of 17.5 cents on shipments made prior to that date. Computed on the average distance over the routes of movement, 748 miles, the rates of 17.5 and 22 cents would have yielded ton-mile earnings of 4.68 and 5.88 mills, respectively.

Approximately two years before complainant's shipments moved a rate of 17.5 cents applied on crude oil, in tank-car loads, from Wichita Falls to New Orleans, but was restricted to movements over the Missouri, Kansas & Texas of Texas and the Louisiana Railway & Navigation lines. Only six of complainant's shipments moved over these lines. On April 16, 1918, the same rate was established from Burkburnett, Tex., on the Missouri, Kansas & Texas of Texas, 14 miles north of Wichita Falls. On June 25, 1918, this rate was increased to 22 cents.

When the shipments moved, Iowa Park took the same rates on crude oil as Wichita Falls to Tulsa, Okla., Kansas City, Mo., Memphis,

Tenn., and Chicago, Ill. These rates, for distances from 314.3 to 1,001.4 miles, ranged from 18 to 35 cents on June 24, 1918, and yielded from 7 to 11.4 mills per ton-mile. The rates on June 25, 1918, yielded from 8.8 to 14.3 mills per ton-mile. In *Akin Gasoline Co. v. Director General*, 57 I. C. C., 136, reparation was awarded on liquefied petroleum gas in tank-car loads shipped during July and August, 1918, from Electra, Tex., on the Fort Worth & Denver City, 15 miles west of Iowa Park, to North Baton Rouge, La., to the basis of rates of 41.5 and 37.5 cents contemporaneously maintained from Wichita Falls. These rates yielded an average of 13.59 mills per ton-mile for a distance of 581 miles.

When the shipments moved a blanket rate of 17.5 cents, increased on June 25, 1918, to 22 cents, applied from the oil fields throughout Oklahoma to New Orleans. These rates yielded 4.92 and 6.18 mills per ton-mile, respectively, for an average distance of 712 miles from six representative Oklahoma points referred to by complainant. A rate of 18.5 cents, increased on June 25, 1918, to 23 cents, applied from southern Kansas fields to New Orleans. The latter rates yielded 4.52 and 5.62 mills per ton-mile for an average distance of 818.5 miles from four representative points.

Defendants contend that the rates from Kansas and Oklahoma are too low to be used as a standard of reasonableness and that the rates sought by complainant are shown to be too low by the ton-mile and car-mile earnings which they would yield. They refer to a large number of rates from the midcontinent, Texas, and Louisiana fields for substantially equal distances approved or prescribed by us in previous cases. Where the rates approved or prescribed were applicable to refined oils defendants have used constructive rates on crude oil 5 cents less than the refined-oil rates, which relationship was approved in *Midcontinent Oil Rates*, 36 I. C. C., 109. In only a few instances are the rates referred to lower than those here assailed, and in no instance are they as low as the rates complainant seeks to have applied on its shipments.

We find that the rates assailed were not unreasonable. The undue prejudice, if any existed, was subsequently removed and complainant has not shown that it was damaged thereby. The complaint will be dismissed.

No. 11773.

PHILIP CAREY MANUFACTURING COMPANY ET AL.

v.

DIRECTOR GENERAL, AS AGENT, ALABAMA & VICKSBURG RAILWAY COMPANY, ET AL.

Submitted March 22, 1921. Decided October 22, 1921.

Rates on liquid asphalt, in tank-car loads, from Louisiana refining points to Cincinnati, Ohio, found not unreasonable or unduly prejudicial, except the rate from Meraux, La., to the extent that it exceeded the rate from New Orleans, La. Reparation awarded.

Luther M. Walter, John S. Burchmore, and Nuel D. Belnap for complainants.

William Burger and *W. N. McGehee* for defendants.

John F. Finerty for Director General of Railroads, as Agent.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by complainants to the report proposed by the examiner and the case was orally argued.

Complainants are the Philip Carey Manufacturing Company, the Chatfield Manufacturing Company, and the Richardson Company, corporations manufacturing prepared roofing, asphalt shingles, and roofing paper at Lockland and Carthage, Ohio, within the switching limits of Cincinnati, Ohio, and the Sinclair Refining Company of Louisiana, a corporation refining petroleum at Meraux, La. By complaint filed August 30, 1920, they allege that the rates charged by defendants on and after June 25, 1918, on liquid asphalt, in tank-car loads, from Meraux, Baton Rouge, Good Hope, and New Orleans, La., to points within the switching limits of Cincinnati were and are unreasonable and unduly prejudicial, as compared with the rates to Chicago, Vandalia, Marseilles, East St. Louis, Ill., and St. Louis, Mo. We are asked to establish reasonable and nonprejudicial rates for the future and to award reparation. Rates will be stated in cents per 100 pounds.

This liquid asphalt is a low-grade product, worth 3.5 cents per gallon, resulting from the distillation of crude petroleum imported

from Mexico. The process, and the refineries at which it is used, are sufficiently described in *Certain-teed Products Corp. v. Director General*, 63 I. C. C., 93. All of the shipments here considered moved from the refinery at Meraux, 8 miles southeast of New Orleans on the Louisiana Southern and within 1.9 miles of the New Orleans switching limits.

The distances to Cincinnati, Lockland, and Carthage are 844, 856, and 854 miles, respectively, over the Southern and its connections. From Baton Rouge the Yazoo & Mississippi Valley and the Louisville & Nashville form a direct route through Memphis slightly longer than the route from New Orleans over the Southern. Except as noted, reference hereinafter to New Orleans will include all points the rates from which are assailed.

Prior to August 1, 1915, an import commodity rate of 12 cents applied from New Orleans to Cincinnati on asphalt when refined from imported petroleum, and remained in effect until June 25, 1918, when all import rates on asphalt from the Gulf ports were canceled as a result of general order No. 28 of the Director General of Railroads, thereby making applicable the domestic rates, which were contemporaneously increased 25 per cent. This resulted in a commodity rate to Cincinnati of 25 cents from all of the points of origin except Meraux. A combination of the local rates of 2.5 cents to New Orleans and 25 cents beyond applied from that point. On June 8, 1919, the New Orleans rate was made applicable from Meraux, and on October 15, 1919, the rate from each of the points of origin was reduced to 24.5 cents, and remained in effect until the general increases of August 26, 1920, when it became 30.5 cents.

From June 15, 1915, to May 16, 1918, a domestic rate of 12 cents applied on asphalt from Baltimore, Md., to Cincinnati. It was then increased to 14.5 cents following our supplemental order in *The Fifteen Per Cent Case*, 45 I. C. C., 303. It was again increased to 18 cents on June 25, 1918, under general order No. 28; to 19 cents on December 8, 1919; to 21 cents on December 31, 1919; and to 30.5 cents under the general increases of August 26, 1920. Complainants do not contend that New Orleans was unduly prejudiced and Baltimore unduly preferred between June 25, 1918, and August 26, 1920, or at any other time, but introduced the foregoing evidence apparently to show that the New Orleans carriers for several years prior to June 25, 1918, recognized at Cincinnati the competition of the trunk line carriers from Baltimore, and until May 16, 1918, maintained rates the same in amount from New Orleans as from Baltimore. From New Orleans to Cincinnati the import class rates and the commodity rates applicable on various commodities imported from Europe and Africa range from 2.5 to 10 cents less than the corre-

sponding rates from Baltimore. Cincinnati is 833 miles from New Orleans and about 590 miles from Baltimore.

Complainants contend that the rate from New Orleans to Cincinnati since June 25, 1918, should not have exceeded 21 cents, subject to the general increases of 1920, and reparation to that basis is sought. In support of this contention they show that, following the increase under general order No. 28, various traffic officials of the New Orleans lines and subordinate traffic committees of the Railroad Administration recommended a rate of 21 cents from both New Orleans and Baltimore to Cincinnati, that rate being 87 per cent of the Baltimore-Chicago rate of 24.5 cents.

The rate from New Orleans to Cincinnati on refined petroleum products was 27 cents prior to August 26, 1920. The value of these products is considerably in excess of that of asphalt, but the rates were on a different basis. The former reflected the uniform increase of 4.5 cents made subsequent to general order No. 28, in lieu of the 25 per cent increase provided thereby. The asphalt rates were increased 25 per cent. Any former relationship was thereby disrupted. *Certain-teed Products Corp. v. Director General, supra.*

Among the import rates from New Orleans to Cincinnati prior to August 26, 1920, referred to in the record, are rates of 31 cents on creosote oil and 26.5 cents on coconut, palm, palm-kernel, and inedible fish oil. The percentage relations of the freight charges at applicable minimum weights to the value of the imported commodities are shown to be substantially less than on asphalt. Various import commodity rates from New Orleans to Cincinnati are less than the rates contemporaneously applicable to Louisville, Chicago, Marseilles, St. Louis, East St. Louis, and Vandalia. Defendants contend that these import rates from New Orleans were not established as maximum reasonable rates, but were fixed primarily to meet competition from the Atlantic ports.

Prior to June 25, 1918, the import rates on asphalt from New Orleans were 14 cents to Louisville, East St. Louis, St. Louis, and Vandalia, and 16 cents to Chicago and Marseilles. The domestic commodity rates that became effective on that date were 22.5 cents to East St. Louis and St. Louis, 26.5 cents to Chicago and Marseilles, and 34.5 cents to Vandalia. These rates remained in effect until October 15, 1919, when a rate of 24.5 cents was established to each of these points and to Cincinnati. On August 26, 1920, the rates were made 30.5 cents to Louisville and Cincinnati and 32.5 cents to East St. Louis, St. Louis, Chicago, Vandalia, and Marseilles. On June 25, 1921, the rates to East St. Louis, St. Louis, and Vandalia were reduced to 31.5 cents and to Chicago and Marseilles were in-

creased to 35.5 cents. From June 25, 1918, to June 8, 1919, the rate from Meraux to each of the above-named destinations was 2.5 cents over the New Orleans rate, being made on the New Orleans combination the same as the rate to Cincinnati.

Complainants contend that the adjustment prior to June 25, 1918, when the import rate to Cincinnati was less than to the other points named, more nearly reflected the proper relationship that should exist between Cincinnati and those points. They suggest that prior to the increases of August 26, 1920, the rates should have been 21 cents to Cincinnati, 22.5 cents to East St. Louis, St. Louis, and Vandalia, and 24.5 cents to Marseilles and Chicago, which it is stated were the rates recommended to the Railroad Administration by the freight traffic subcommittees of the eastern, western, and southern territories.

No evidence was introduced in support of the allegation of undue prejudice except a showing that liquid asphalt was used at the alleged unduly preferred points in the manufacture of articles of commerce that compete with the manufactured products of complainants, and that prior to June 25, 1918, the import rate from New Orleans to Cincinnati was lower than the rates to said alleged unduly preferred points. The distances from New Orleans to the points named are about 695 miles to St. Louis and East St. Louis, 688 miles to Vandalia, 876 miles to Marseilles, and 912 miles to Chicago, as compared with 833 miles to Cincinnati.

For defendants it was testified that, owing to the substantially similar appearance and like uses of liquid asphalt, refined tar, and petroleum tailings or road oil, the rates on these commodities have been practically the same in the southeastern territory for several years. They refer to *Lewis Mfg. Co. v. A., B. & A. Ry. Co.*, 57 I. C. C., 410, where we found the rates prior to June 25, 1918, from several points in the southeastern territory, including New Orleans, to Birmingham, Ala., not unreasonable. The rate on tar and creosote oil, in tank-car loads, there under attack, was 21 cents for a haul of 355 miles. That rate was increased on June 25, 1918, to 24.5 cents and the present rate is 30 cents. Defendants refer to rates of 24 and 26.5 cents in effect prior to the general increases of 1920 on liquid asphalt from New Orleans to numerous points in the southeast for hauls ranging from 299 to 613 miles, and rates on asphalt from Cincinnati, Louisville, Evansville, and St. Louis to many important points in Tennessee, Alabama, Georgia, and South Carolina, substantially higher than those assailed, and for hauls considerably shorter.

Defendants show that the rates from New Orleans to Cincinnati compare favorably with the rates from New Orleans to many points in Illinois, Indiana, Ohio, and Missouri for substantially similar

distances, and with the rates from Baltimore to equidistant points in central territory. They also direct attention to the fact that the empty-car movement is 100 per cent of the loaded movement.

The 24.5-cent rate from New Orleans to Cincinnati yielded 5.9 mills per ton-mile, and 21.8 cents per car-mile based on 74,179 pounds, the average weight of the shipments upon which reparation is asked. A rate of 21 cents would yield 5 mills per ton-mile, and 18.7 cents per car-mile based on the same average weight. In *Certain-teed Products Corp. v. Director General*, *supra*, we said that earnings of 7.3 mills per ton-mile and 28.1 cents per car-mile on this commodity from New Orleans to Vandalia did not seem excessive. See also *Johns-Manville Co. v. Director General*, 61 I. C. C., 420.

We find that the rates assailed were not and are not unreasonable or unduly prejudicial, except that during the period from June 25, 1918, to June 8, 1919, the rate from Meraux to Cincinnati was unreasonable to the extent that it exceeded 25 cents per 100 pounds, the rate contemporaneously applicable from New Orleans; that complainants, Philip Carey Company, Chatfield Manufacturing Company, and Richardson Company, made shipments as described and paid and bore the charges thereon; that they were damaged in the amount of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that they are entitled to reparation, with interest. They should comply with rule V of the Rules of Practice.

64 I. C. C.

No. 11853.

C. S. MALTBY

v.

DIRECTOR GENERAL, AS AGENT, AND SUMPTER
VALLEY RAILWAY COMPANY.

Submitted April 18, 1921. Decided October 22, 1921.

Rate charged on chrome iron ore from Baker, Oreg., to South Chicago, Ill., found applicable and not unreasonable. Complaint dismissed.

M. E. VanDine, R. T. Boyd, and Bishop & Bahler for complainant.
John F. Finerty, H. A. Scandrett, J. M. Souby, W. A. Robbins,
and *Rogers MacVeagh* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner.

Complainant is successor in interest to R. B. Adams and C. S. Maltby, copartners formerly dealing in chrome iron ore in California and Oregon. He alleges that the rate assessed on five carloads of chrome iron ore shipped in October and November, 1918, from Baker, Oreg., to South Chicago, Ill., was unreasonable and illegal. The prayer is for reparation only. Rates will be stated in amounts per net ton.

The shipments originated at Prairie, Oreg., moved to Baker over the Sumpter Valley, a narrow-gauge railway, and were transferred into standard-gauge cars at Baker. The local rate of \$3.50 assessed for the movement to Baker was found not unreasonable or otherwise unlawful in *Maltby v. S. V. Ry. Co.*, 63 I. C. C., 103. Upon arrival at South Chicago the shipments were rejected by the original consignee, and were later reshipped to East Chicago, Ind. The charges for the movement beyond South Chicago are not assailed. Charges from Baker to South Chicago were assessed at a rate of \$14.30. Complainant contends that a rate of \$11.70 was applicable.

Prior to June 25, 1918, a rate of \$11.40 was applicable to "ore and concentrates" from Baker to South Chicago. Section 2 of general order No. 28 of the Director General of Railroads provided:

(a) Interstate commodity rates on the following articles in carloads shall be increased by the amounts set opposite each:

*	*	*	*	*	*	*
Ores, iron—30 cents per net ton of 2000 pounds; except that no increase shall be made in rates on ex-lake ore that has paid one increased rail rate before reaching lake vessels.						

(b) Interstate commodity rates not included in the foregoing list shall be increased twenty-five (25) per cent.

To comply with the above order two rates were established on "ore and concentrates": one of \$14.30, or 25 per cent higher than the previous rate, with the notation "will not apply on iron ore"; and one of \$11.70, or 30 cents higher than the previous rate, with the notation "applies on iron ore only." Complainant contends that these shipments consisted of iron ore.

Two mining engineers were called, one by complainant and the other by defendants. The former testified, in effect, that chrome iron ore is an iron ore, because more than 5 or 10 per cent of its contents is iron which enters into the finished commercial product. The witness for defendants testified that chrome iron ore is not "iron ore commercially" which is generally used for making cast iron. Neither expert had analyzed or even seen the ore in these shipments and no smelter returns were submitted.

Defendants' witness, an employee of the Oregon-Washington Railroad & Navigation Company, testified that no iron ore is produced on that line or its connections, and that the lower rate with the notation "applies on iron ore only" was a paper rate established on June 25, 1918, merely to conform with general order No. 28.

In *Maltby v. S. V. Ry. Co.*, *supra*, we described the production and uses of chrome iron ore, which is mined for and sold on the basis of its chrome content, and said:

From a commercial standpoint chrome ore is a commodity distinct from and more valuable than iron ore, and the mere fact that it was subjected to a different measure of increase than iron ore does not establish the unreasonableness of the rate charged. With the exception of the attempt to establish the identity of chrome iron ore and iron ore, no evidence was introduced bearing upon the inherent or relative reasonableness of the rate attacked.

Upon this record, and following that decision, we find that the rate assailed was not unreasonable or otherwise unlawful. The complaint will be dismissed.

No. 11907.
COTTO-WAXO COMPANY ET AL.
v.
ANN ARBOR RAILROAD COMPANY ET AL.

Submitted June 17, 1921. Decided October 22, 1921.

Rates and rating on floor-sweeping compound, in carloads, from St. Louis, Mo., to points in official territory found not unreasonable or otherwise unlawful. Complaint dismissed.

William E. Rosenbaum for complainants.

L. H. Strasser and *A. H. Greenly* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by complainants to the report proposed by the examiner.

Complainants are Cotto-Waxo Company and St. Louis Asphalt Company, corporations manufacturing floor-sweeping compound at St. Louis, Mo. They allege that the fifth-class rating and rates under the official classification applied by defendants on floor-sweeping compound, in carloads, from St. Louis, Mo., to points in official territory are unreasonable, unjustly discriminatory, and unduly prejudicial. We are asked to prescribe rates for the future.

Complainants' floor-sweeping compound is a mixture consisting chiefly of screened sawdust and silica sand, with ground iron ore as coloring matter and paraffine oil added. It is shipped in metal drums and wooden barrels of 100, 200, and 300 pounds each, and, as packed, has a weight density of about 50 pounds per cubic foot. It is said that over 60,000 pounds can be loaded in a standard box car. This compound is scattered over floors before sweeping to absorb dust; the sand has a scouring effect, and the paraffine oil tends to polish and disinfect, although complainants' product is not sold as a disinfectant. It is shipped to retailers and jobbers at invoiced prices ranging from \$1.30 per 100 pounds in 300-pound barrels to \$1.65 per 100 pounds in 100-pound metal drums. Loss and damage claims have been negligible.

For many years floor-sweeping compounds, in various packages, in carloads, minimum 36,000 pounds, have been rated fifth class in

official territory and have moved at class rates. Complainants' witness testifies that when this rating was first established floor-sweeping compounds consisted of ground wood pulp, cottonseed hulls, or other light materials that would absorb oil, a high-grade oil as an odorizer, paraffine as a floor dressing, and a high-grade disinfectant; that these ingredients were more valuable than those used by complainants, and that the compound was of lighter weight density than complainants' product.

Complainants' product competes mainly with sawdust, which is used dampened with water. It also competes with other floor-sweeping compounds and with sand. Sawdust is, and since 1887 has been, rated sixth class, minimum 24,000 pounds, in official classification. Lumber, in carloads, is also rated sixth class, and prior to June 25, 1918, the commodity rates on lumber, which were on practically the sixth-class basis, also applied on sawdust. Since then the class rates and the commodity rates on lumber have been increased by different amounts, as a result of which the commodity rates on lumber from St. Louis to central territory, which also apply on sawdust, are materially lower than sixth class. Complainants contend that the rating and rates on their product should not exceed those on sawdust. Sawdust is generally shipped in bulk and loads from 22,000 to 28,000 pounds in a standard box car. It is valued at from \$3.75 to \$5 per ton at sawmills in Missouri and Arkansas, where complainants procure their supply, and from \$8.50 to \$10 per ton at eastern mill points.

Complainants' witness testifies that the rate on floor-sweeping compound from St. Louis to Memphis, Tenn., exceeds the rate on wheat flour for similar hauls in the same territory; that wheat flour is from three to five times more valuable; and that the grain-product rates apply on prepared animal, poultry, and pigeon feed when not less than 60 per cent of the mixture is grain products. It is also testified that the value of lumber exceeds the value of floor-sweeping compound, but moves at rates materially lower in official territory.

The following ratings apply on floor-sweeping compound and sawdust, in carloads, under the consolidated classification:

	Official. Southern. Western.		
Floor-sweeping compound, minimum 36,000-----	5	6	E
Sawdust—Minimum 24,000, subject to rule 34 respecting capacity of car-----	6	6	E

In western territory the class-E rates on floor-sweeping compound are as low as and in some instances lower than the commodity rates on sawdust, and complainants have shipped approximately 600 carloads per annum to points in that territory. They have not been able to ship in carload quantities to points east of the Indiana-

Illinois state line, where the rates on sawdust are substantially lower than on floor-sweeping compound.

Defendants' witness testifies that sawdust is produced at numerous points in official territory; that it is less valuable than floor-sweeping compounds; that some floor-sweeping compounds contain various oils, coloring matter, odorizers, salt, and disinfectants, are put up in small tin or fiber-board containers, and compete with cleaning, washing, and scouring compounds which, in carloads, are rated in the official classification fifth class if liquid or powder, and fourth class if in other forms; and that generally a higher rating should apply on a manufactured product than on the raw material.

We find that the rates and rating assailed are not unreasonable or otherwise unlawful. The complaint will be dismissed.

64 I. C. C.

No. 11683.

SILICA SAND PRODUCERS TRAFFIC ASSOCIATION OF
ILLINOIS

v.

CHICAGO, BURLINGTON & QUINCY RAILROAD COM-
PANY, DIRECTOR GENERAL, AS AGENT, ET AL.

Submitted June 18, 1921. Decided October 14, 1921.

Rates on imported flint pebbles, in carloads, from New York, N. Y., to Ottawa, Wedron, Millington, and Oregon, Ill., found not unreasonable. Complaint dismissed.

J. H. Kane and R. E. Riley for complainant.

R. W. Barrett and Fred W. Heid for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner and the case was orally argued.

Complainant is a voluntary organization of silica-sand producers in Illinois. By complaint filed August 3, 1920, it alleges that the rates on imported flint pebbles, in carloads, from New York, N. Y., to Ottawa, Wedron, Millington, and Oregon, Ill., are unreasonable and unduly prejudicial. We are asked to award reparation on approximately 40 shipments which moved within 50 months prior to the filing of the complaint, and to prescribe reasonable and non-prejudicial rates for the future. Rates will be stated in cents per 100 pounds, and do not include the general increases of 1920.

Flint pebbles are imported from Europe and are used by silica-sand producers in reducing or pulverizing the sand to finer grades by placing them with the sand inside large revolving tubes or mills lined with flint brick. The record indicates that flint pebbles are found in this country, but it is not shown to what extent, if any, shipments are made from domestic points of origin. Complainant testified that at the European producing points these pebbles are worth little more than the labor necessary to prepare them for shipment, and that their value at the sand-producing plants in northern Illinois, hereinafter called Illinois mills, which ranged from \$9.50 per ton in 1909 to \$27 per ton during the last few years, represents

almost entirely the transportation cost. They are shipped in bags and loaded in box cars to an average weight of 31 tons, and under the average of the rates in effect subsequent to December 8, 1919, yield \$232.50 per car.

From May 1, 1915, to May 14, 1918, the rate maintained by defendants from New York to Ottawa, Wedron, and Millington was 25.4 cents and to Oregon 27 cents. On the latter date the rates were increased, respectively, to 29 and 31 cents, and on June 25, 1918, under authority of general order No. 28, of the Director General of Railroads, they were again increased to 36.5 and 39 cents. The 39-cent rate was reduced on December 8, 1919, to 38.5 cents.

Complainant introduced an exhibit comparing the rates assailed with lower rates on other commodities from New York and other points to these destinations. It lays particular stress upon rates effective December 8, 1919, from New York to Ottawa and Oregon, respectively, of 26.5 and 28 cents on gravel, 24.5 and 26 cents on glass sand, and 31 and 33 cents on flint brick, commodities which it asserts are analogous to flint pebbles. Complainant considers rates on gravel comparable with those here attacked for the reason that flint pebbles on the European coast are nothing more or less than gravel. Defendants contend that the value of gravel is much lower than that of flint pebbles; that it moves in open-top cars; and that there are comparatively few long-haul movements. Neither they nor complainant knew of any movement of gravel from New York under the rates instanced. Glass sand is worth from \$2 to \$5 per ton at Illinois mills. There appears to be no movement from New York. The value of flint brick at Illinois mills ranges from \$27 to \$42 per gross ton, and some of it is imported, the import movement in 1919 amounting to 117,000 tons. Complainant expressed the opinion that flint pebbles were simply another form of flint brick and should not take higher rates. Reference was made to rates from New York to Ottawa and Oregon of 31.5 and 33.5 cents on plaster board, which according to complainant, contains ground flint pebbles, is more valuable, and does not load as heavily. The exhibit also includes rates on other commodities from various points to Illinois mills.

Complainant calls attention to the fact that the rates assailed are a greater percentage of the sixth-class rates from New York than are the rates to Illinois mills on flint pebbles from Berkeley Springs, W. Va., Hancock, Md., and Mapleton, Pa. Defendants explain that the lower percentage from these points was brought about by the fact that they take the Baltimore basis of class rates but are less distant from the Illinois mills than Baltimore and have consequently been accorded lower commodity rates. There appears to be no movement of flint pebbles from the points named. Complainants admitted

that there is no competition between flint pebbles and any of the other commodities included in its rate comparisons.

Defendants contend that in determining the reasonableness of rates on imported flint pebbles the expensive service in New York harbor, which is not involved in the transportation of any of the compared commodities, with one or two exceptions, must be given consideration; that the average revenue per car derived from flint pebbles is considerably less than that under some of the rates with which comparisons are made; and that since complainant failed to show distances and other elements vital to valuable rate comparisons the record is devoid of evidence upon which the reasonableness of the rates assailed can be determined.

Complainant further contends that the increase of 25 per cent made on June 25, 1918, in the rates on flint pebbles was contrary to the provisions of general order No. 28, and that there was no justification or authority for imposing a greater increase on flint pebbles than on sand and gravel, which were accorded a flat increase of 1 cent per 100 pounds. The term "sand and gravel," as ordinarily used and as used in general order No. 28, would not include grinding pebbles, a higher-grade commodity serving a different purpose. In any event the question here is the reasonableness of the rates assailed, which can not be determined by a construction of general order No. 28, *Parlin & Orendorff Co. v. Director General*, 59 I. C. C., 63. Witness for defendants testified that the flat increase of 1 cent per 100 pounds made in compliance with general order No. 28 was applied principally on short-haul traffic and as to the greater portion of the traffic effected an increase of more than 25 per cent. The record does not show that flint pebbles compete with any of the commodities which were accorded a flat increase on June 25, 1918.

We find that the rates assailed are not unreasonable or otherwise unlawful. The complaint will be dismissed.

64 I. C. C.

No. 12135.

JOSEPH SUSSMAN, DOING BUSINESS UNDER THE NAME
OF TACOMA JUNK COMPANY,

v.

NORTHERN PACIFIC RAILWAY COMPANY.

Submitted July 14, 1921. Decided October 22, 1921.

Rate charged on a carload of scrap iron from Sidney, Mont., to Tacoma, Wash., found unlawful and unreasonable. Reparation denied because of complainant's failure to prove that he paid the charges. Complaint dismissed.

Emuel J. Forman for complainant.

L. B. da Ponte for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a junk dealer at Tacoma, Wash., by complaint filed January 20, 1921, alleges that the rate charged by defendant on a carload of scrap iron shipped July 2, 1917, from Sidney, Mont., to Tacoma was unreasonable. Reparation only is sought. Rates are stated per 100 pounds.

Charges of \$320 were collected at the applicable specific class-D rate of 64 cents on a weight of 50,000 pounds. There was also an unexplained back-haul charge of \$5, which is not assailed. After the charges were paid complainant filed a claim for refund to the basis of a combination rate of 61 cents, made up of a class-D distance rate of 31 cents to Sappington, Mont., and a commodity rate of 30 cents beyond. The tariffs on file with us show that this class-D rate was 33 cents. Refund of \$29.28 was made, although there was no tariff authority to apply the combination in lieu of the published rate. Complainant now seeks reparation to the basis of a combination rate of 57 cents, made up of a class-E distance rate of 27 cents to Sappington and the commodity rate of 30 cents beyond.

The departure from the rule of the fourth section was not protected by application or otherwise. We find that the published through rate was unlawful and unreasonable to the extent that it exceeded 57 cents, the lowest combination above referred to. Complainant's witness had no personal knowledge as to whether complainant paid and bore the charges, and no order for reparation can be entered.

The complaint will be dismissed.

INVESTIGATION AND SUSPENSION DOCKET No. 1303.

RATES TO, FROM, AND BETWEEN POINTS SOUTH OF
THE OHIO RIVER, INCLUDING THE MISSISSIPPI
VALLEY.

PART II.—COMMODITY RATES.

Submitted July 22, 1921. Decided November 15, 1921.

Proposed revision of commodity rates designed to eliminate deviations from the long-and-short-haul provision of the fourth section of the interstate commerce act, in the construction of rates primarily affecting Mississippi Valley points and Nashville, Tenn., found not justified, except as indicated herein. Respondents required to cancel suspended schedules in so far as found not justified, and to file new schedules establishing rates in accordance with maximum bases prescribed. Proceeding discontinued.

Appearances shown in Part I, 64 I. C. C., 107.

REPORT OF THE COMMISSION.

DANIELS, *Commissioner*:

This report, designated as Part II, deals with certain changes proposed by respondents in their commodity rates applicable, generally speaking, to, from, and between points south of the Ohio River and including the Mississippi Valley. The suspended rates include rates from Ohio and Mississippi river crossings, Gulf ports, and related points, to Memphis, Tenn., New Orleans, La., and points generally in Mississippi Valley territory, and to Nashville, Tenn.; from Missouri River points and related points to points in Mississippi Valley territory; from points generally in Mississippi Valley territory to Ohio River crossings and related points; and from points in the southeast and from Virginia cities, from New York, N. Y., and from other points in trunk line territory, to Nashville. Upon numerous protests the schedules which the carriers proposed were suspended until July 28, 1921, and later dates; and the effective dates of the tariffs have been voluntarily deferred by respondents until November 28, 1921. Certain class rates which were also involved in this proceeding have been made the subject of a separate report, designated as Part I, 64 I. C. C., 107. Rates are stated herein in amounts per 100 pounds.

Some of the reasons which led to the proposed revision of commodity rates are set forth in our report in Part I. It is sufficient here to state that the schedules were filed as a result of our de-

cisions¹ to the effect that the maintenance of lower rates to New Orleans, Memphis, and other Mississippi River points, to Mobile, Ala., and other Gulf ports, and to Nashville on the Cumberland River, than were contemporaneously maintained to intermediate points was no longer justified on the ground of existing water competition. A continuation of fourth section relief was accordingly denied. The carriers propose to remove the discrimination against the intermediate points by materially increasing the rates to the water points and by making reductions generally to intermediate points. Some of these reductions are slight and others are substantial in amount. They state that under the proposed readjustment they have endeavored to construct rates in the Mississippi Valley territory on a strictly "dry land" basis with the view of preserving the existing rates in a general way in the whole southern territory, and at the same time making them conform to the provisions of the fourth section.

The Mississippi Valley territory, hereinafter referred to as the Mississippi Valley, lies east of the Mississippi River and is more particularly described in Part I, page 114. The territorial location of short-line routes to and from points in this territory has an important bearing in the establishment of a permanent rate adjustment to conform to a strict observance of the long-and-short-haul provision of the fourth section. For instance, from important territories north, east, and west, certain short routes to the Mississippi Valley are either through southeastern territory or on the west side of the Mississippi River. Likewise from certain important shipping points in the north and northwest the short routes are through the Mississippi Valley, and from important shipping points in the north and east the short routes to Arkansas and Louisiana are through the southeast and the Mississippi Valley. The short route from Cincinnati, Ohio, to New Orleans is the line of the Southern through Chattanooga, Tenn., Birmingham, Ala., and Meridian, Miss. The short route from Louisville, Ky., to Mobile is the Louisville & Nashville through Decatur, Birmingham, and Montgomery, Ala. The three gateways to the lower Mississippi Valley from the east are Columbus and Meridian, Miss., and Mobile. The short routes from either Cincinnati or from a considerable portion of the territory beyond, in central territory, are through the Cincinnati gateway and such southeastern points as Chattanooga and Birmingham.

From St. Louis, Mo., to Memphis and to Helena, Ark., the short routes are the St. Louis-San Francisco and Missouri Pacific, re-

¹ *Memphis-Southwestern Investigation*, 55 I. C. C., 515, hereinafter referred to as the *Memphis Case*; *Murfreesboro Board of Trade v. L. & N. R. R. Co.*, 55 I. C. C., 648, herein after referred to as the *Murfreesboro Case*; and *Meridian Traffic Bureau v. Director General*, 57 I. C. C., 107.

spectively, which operate west of the Mississippi River. If these carriers are to continue to participate in the traffic to the Mississippi Valley their rates can not exceed to the intermediate points the rates applied to the river crossings named.

From the Ohio River crossings and from St. Louis to the southeast, some of the short routes are through the Mississippi Valley. Thus, from St. Louis or from Cairo, Ill., to Birmingham, the short route is the Illinois Central through Jackson, Tenn., and Corinth, Miss. Under a strict observance of the fourth section the Illinois Central can not maintain higher rates to Jackson or Corinth than to points in the southeast.

From certain Ohio River crossings to Arkansas and Louisiana the short routes are in most instances through the Mississippi Valley and to some extent through the southeast. Thus, from Cincinnati to points on the Southern Pacific west of New Orleans the short line is through Chattanooga, Birmingham, and Meridian. From Louisville or Cairo to the territory in Louisiana reached through the Vicksburg, Miss., gateway, the short route is through the Mississippi Valley; and similarly to points in Arkansas through Memphis.

These illustrations show how the territories on either side of the geographical wedge known as the Mississippi Valley are linked together in a rate adjustment requiring a strict observance of the long-and-short-haul provision, and show that, for such rate-making purposes, the Mississippi Valley can hardly be considered wholly apart from the southeast or the southwest. The carriers, therefore, in making the proposed revision of rates to the Mississippi Valley, have contemplated the removal of all fourth section departures from and to all territories of origin not only in the Mississippi Valley proper but as well on the west side of the Mississippi River in Arkansas and Louisiana and at points in the southeast. In making this revision consideration was given to the effect upon the carriers' revenue as a whole and to the harmonizing of conflicting commodity descriptions, mixed carload ratings, and minimum carload weights, between the three territories. Another consideration was to obtain an adjustment which would preserve to the direct routes as much of the traffic as possible now handled by those routes.

RATE CHANGES PROPOSED.

In view of the volume of testimony introduced, the number of exhibits filed, and the numerous rate changes involved, it will be impracticable to reproduce or refer to them all. Certain of respondents' exhibits illustrate the rate changes proposed as to 38 representative commodities.

The following tables which show the present and suspended rates from St. Louis to representative destinations are fairly illustrative:

Present and suspended rates from St. Louis, Mo., to the Mississippi River and Yazoo River points indicated.

	Memphis, Tenn.		Helena, Ark.		Greenville, Miss.		Vicksburg, Miss.		Natchez, Miss.		New Orleans, La.		Greenwood, Miss.	
	Pres-ent.	Sus-pended.	Pres-ent.	Sus-pended.	Pres-ent.	Sus-pended.	Pres-ent.	Sus-pended.	Pres-ent.	Sus-pended.	Pres-ent.	Sus-pended.	Pres-ent.	Sus-pended.
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Agricultural implements, c. l., min. weight 24,000 lbs.	30	50	52	55	52	60	52	64	52	68	52	70	52	60
Asphalt, c. l.	22	32	30	33	30	38	30	40	30	42	30	44	36.5	38
Bagging, c. l.	18.5	33	28.5	36	28.5	38	28.5	42	28.5	44	28.5	46	38.5	40
Beverages, cereal, c. l.	16	45	17	49	22.5	53	22.5	57	22.5	60	22.5	62	53	53
Brick, pressed or coated, c. l.	16	17	22.5	19	22.5	21	22.5	21	22.5	23	22.5	24	22.5	21
Brick, fire, c. l.	16	17	22.5	19	22.5	21	22.5	21	22.5	23	22.5	24	22.5	21
Brick, paving, c. l.	33.5	46	50	50	50	55	50	59	50	62	50	64	68.5	55
Canned goods, c. l.	18.5	33	28.5	36	28.5	40	28.5	42	28.5	44	28.5	46	38.5	40
Cotton ties, c. l.	16.7	23	25.3	25	25.3	28	25.3	29	25.3	31	25.3	32	28.7	30
Fertilizer, c. l.	35.5	46	50	55	50	55	50	59	50	62	50	64	55.5	55
Cabbage, onions, and potatoes, c. l.														
Furniture, rate fourth class in southern class, c. l.	58.5	79	83.5	86	83.5	95	83.5	101	83.5	106	83.5	111	95	95
Fruit jars (glass), c. l.	38.5	52	55.5	57	55.5	62	55.5	66	55.5	69	55.5	72	65.5	62
Glucose, c. l.	28.5	36	32	30	32	43	32	46	32	48	32	50	58.5	43
Grease, axle, c. l.	33.5	37	50	41	50	43	50	48	50	50	50	52	45	45
Iron, special, c. l.	22	39	36.5	42	36.5	46	36.5	49	36.5	52	36.5	54	46.5	46
Molasses and sirups, c. l.	33.5	42	50	46	50	50	50	53	50	56	50	58	58.5	50
Petroleum and its products, c. l.	22	45	30	49	30	53	30	57	30	60	30	62	51.5	53
Packing-house products, c. l.	35.5	53	43.5	58	43.5	55.5	43.5	68	43.5	71	43.5	74	60	64
Paints, dry or liquid, c. l.	26.5	46	36.5	50	36.5	55	36.5	59	36.5	62	36.5	64	68.5	55
Paper bags, c. l.	25.5	36	42	39	42	43	42	45	42	48	42	50	52	43
Paper, wrapping, c. l.	25.5	42	42	46	42	46	42	46	42	46	42	46	52	50
Paper, newspaper, c. l.	25.5	42	42	46	42	46	42	46	42	46	42	46	52	50
Pine, sewer, c. l.	22	23	30	25	30	28	30	29	30	31	30	32	28	28
Plaster, wall, c. l.	14.5	16	20.5	17	20.5	19	20.5	20	20.5	21	20.5	22	25.5	19
Plaster board, c. l.	18.5	19	24.5	20	24.5	22	24.5	24	24.5	25	24.5	26	33.5	22
Roofing, prepared or composition, c. l.	25.5	36	33.5	39	33.5	43	33.5	46	33.5	48	33.5	50	43	43
Slate, c. l.	25.5	30	33.5	33	33.5	36	33.5	38	33.5	41	33.5	42	40	36
Soap, c. l.	25.5	37	42	41	42	45	42	48	42	50	42	52	55.5	45
Soda, caustic and sal, c. l.	25.5	40	33.5	44	33.5	48	33.5	51	33.5	54	33.5	56	45	43
Soda, silicate of, c. l.	33.5	32	33.5	35	33.5	38	33.5	40	33.5	42	33.5	44	40	38
Starch, c. l.	16	42	50	46	50	50	50	53	50	56	50	58	50	50
Stone, rough blocks, c. l.	23.5	19	26.5	20	26.5	22	26.5	24	26.5	25	26.5	26	30.5	22
Stone, dressed blocks, c. l.	33.5	23	33.5	25	33.5	28	33.5	29	33.5	31	33.5	32	38.5	28
Stones, monuments, c. l.	46.5	36	60	39	60	50	46	50	46	50	46	50	73.5	43
Stoves and ranges, c. l.	22	62	63.5	68	63.5	74	63.5	79	63.5	83	63.5	86	73.5	74
Tile, hollow building, c. l.	35.5	22	30	24	30	25	30	27	30	29	30	32	32	26
Wagons, farm, c. l.		50	52	55	52	60	52	64	52	63	52	70	66.5	60

Present and suspended rates from St. Louis, Mo., to the Tennessee and Mississippi junction points indicated.

	Union City, Rives, and Gibbs, Tenn.		Martin, Tenn.		Dyersburg, Tenn.		Milan, Tenn.		Jackson, Tenn.		Corinth, Miss.		Grand Junction, Tenn.		New Albany, Miss.		Tupelo, Miss.	
	Pres- ent.	Sus- pended.	Pres- ent.	Sus- pended.	Pres- ent.	Sus- pended.	Pres- ent.	Sus- pended.	Pres- ent.	Sus- pended.	Pres- ent.	Sus- pended.	Pres- ent.	Sus- pended.	Pres- ent.	Sus- pended.	Pres- ent.	Sus- pended.
Agricultural implements, min. weight	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.
24,000 lbs., c. l.	45.5	39	45.5	40	50	43	46.5	43	50	45	60	50	60	50	63.5	55	63.5	55
Asphalt, c. l.	32	25	32	25	35.5	27	33.5	27	33.5	28	36.5	32	36.5	32	32	35	38.5	35
Bagging, c. l.	42	26	40	26	40	28	40	28	40	30	40	33	40	33	42	36	42	36
Beverages, cereal, c. l.	35	35	35	35	38	38	38	38	38	40	45	45	45	45	45	49	49	49
Brick, pressed, coated, c. l.	15.5	13	15.5	14	16.5	15	16	15	16.5	15	19.5	17	19.5	17	22	19	22	19
Brick, pressed, c. l.	15.5	13	15.5	14	16.5	15	16	15	16.5	15	19.5	17	19.5	17	22	19	22	19
Brick, paving, c. l.	15.5	13	15.5	14	16.5	15	16	15	16.5	15	19.5	17	19.5	17	22	19	22	19
Canned goods, c. l.	50	36	50	36	58.5	39	58.5	41	62	46	65.5	46	62	46	65.5	50	65.5	50
Cotton ties, c. l.	35.5	26	35.5	26	38.5	28	38.5	28	38.5	30	40	33	40	33	42	36	42	36
Fertilizer, c. l.	18	18	23.3	20	22	20	22	21	24	23	23	23	23	23	25	30	25	30
Cabbage, onions, and potatoes, c. l.	43.5	36	43.5	36	46.5	39	46.5	39	46.5	41	50	46	50	46	53.5	50	53.5	50
Furniture, rated fourth class in southern classification, c. l.	62	62	62	62	68	68	68	68	68	71	79	79	79	79	86	86	86	86
Fruit jars (glass), c. l.	58.5	40	58.5	41	63.5	44	62	44	65.5	46	65.5	52	65.5	52	72	57	72	57
Glycerine, c. l.	43.5	28	43.5	28	46.5	31	45.5	31	46.5	32	50	36	50	36	53.5	39	53.5	39
Grease, axle, c. l.	29	29	35.5	31	38.5	32	38.5	32	40	34	42	37	42	37	45.5	41	45.5	41
Iron, special, c. l.	35.5	30	35.5	31	38.5	33	38.5	33	40	35	42	39	42	39	45.5	42	45.5	42
Molasses and sirups, c. l.	43.5	32	43.5	33	46.5	36	45.5	36	46.5	37	50	42	50	42	53.5	46	53.5	46
Petroleum and its products, c. l.	143.5	35	40	35	50	38	44.5	38	44.5	40	51.5	45	48.5	45	51.5	49	51.5	49
Packing-house products, c. l.	50	41	50	42	55.5	46	55.5	46	55.5	48	62	55.5	53	53	60	58	60	58
Paints, dry or liquid, c. l.	36	36	36	36	39	39	39	39	39	41	46	46	46	46	50	50	50	50
Paper bags, c. l.	238.5	28	40	28	53.5	31	45.5	31	56.5	32	58.5	36	55.5	36	62	50	62	39
Paper, wrapping, c. l.	32	32	33	33	36	36	36	36	36	37	42	42	42	42	46	46	46	46
Paper, newspaper, c. l.	38.5	32	40	33	53.5	36	45.5	36	56.5	37	58.5	42	55.5	42	60	46	60	46
Pipe, sewer, c. l.	23.5	18	23.5	18	25.5	20	25.5	20	25.5	21	26.5	23	26.5	23	28.5	25	28.5	25
Plaster, wall, c. l.	12	12	12	12	22.5	14	22.5	14	22.5	14	22.5	16	22.5	16	24	17	24	17
Plaster board, c. l.	26.5	15	28.5	15	30	16	30	16	30	17	30	19	30	19	32	20	32	20
Roofing, prepared or composition, c. l.	28	28	28	28	31	31	31	31	32	32	36	36	36	36	39	39	39	39
Slate, c. l.	24	24	26.5	24	30	26	28.5	26	30	27	31.5	30	33.5	30	36.5	33	36.5	33
Soap, c. l.	29	29	29	29	55.5	32	55.5	32	55.5	34	55.5	47	55.5	37	55.5	41	55.5	41
Soda, caustic and sal, c. l.	31	31	32	32	34	34	34	34	36	36	36	36	36	36	44	44	44	44
Soda, silicate of, c. l.	32	25	32	25	35.5	27	33.5	27	35.5	28	36.5	32	36.5	32	38.5	35	38.5	35
Starch, c. l.	32	32	33	33	36	36	36	36	37	37	42	42	42	42	46	46	46	46
Stone, rough blocks, c. l.	22	15	23.5	15	22.5	16	24.5	16	24.5	17	30.5	19	30.5	19	32	20	32	20
Stone, dressed blocks, c. l.	18	18	18	18	20	20	20	20	21	21	23	23	23	23	25	25	25	25
Stone monuments, c. l.	28	28	28	28	31	31	31	31	32	32	36	36	36	36	39	39	39	39
Stores and ranges, c. l.	75.5	48	75.5	49	83.5	53	82	53	83.5	55	85.5	62	85.5	55	86.5	68	86.5	68
Title, hollow building, c. l.	23.5	17	23.5	17	25.5	18	25.5	18	25.5	19	26.5	22	26.5	22	28.5	24	28.5	24
Wagons, farm, c. l.	45.5	39	45.5	40	50	43	46.5	43	50	45	60	50	60	50	63.5	55	63.5	55

¹ To Rives and Gibbs, 28.5 cents.

¹ To Rives and Gibbs, 40 cents.

¹ To Union City, 42 cents. No rate to Gibbs.

	Holly Springs, Miss.		Winona, Miss.		Aberdeen, Miss.		Ackerman, Miss.		Jackson, Meridian, Miss.		Newton, Miss.		Brookhaven, Miss.		Hattiesburg, Miss.	
	Pres-ent.	Sus-pended.	Pres-ent.	Sus-pended.	Pres-ent.	Sus-pended.	Pres-ent.	Sus-pended.	Pres-ent.	Sus-pended.	Pres-ent.	Sus-pended.	Pres-ent.	Sus-pended.	Pres-ent.	Sus-pended.
	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.
Agricultural implements, min. weight 24,000 lbs., c. l.	62	55	60	68.5	60	68.5	60	68.5	64	78.5	64	64	62	68	82	68
Asphalt, c. l.	38.5	35	38	40	58	40	38	40	40	46.5	44	46.5	44	46.5	44	42
Bagging, c. l.	42	36	40	43.5	40	43.5	40	43.5	42	46.5	44	46.5	44	46.5	44	44
Beverages, cereal, c. l.	49	51	53	53	53	53	53	53	57	57	57	57	60	60	60	60
Brick, pressed, coated, c. l.	20	19	22.5	21	21	22.5	21	22.5	21	25.5	22	28	23	28	28	23
Brick, fire, c. l.	20	19	22.5	21	21	22.5	21	22.5	21	25.5	22	28	23	28	28	23
Brick, paving, c. l.	20	19	22.5	21	21	22.5	21	22.5	21	25.5	22	28	23	28	28	23
Canned goods, c. l.	63.5	50	68.5	55	55	68.5	55	68.5	55	75.5	59	78.5	62	78.5	62	62
Cotton ties, c. l.	42	36	40	43.5	40	43.5	40	43.5	42	46.5	44	46.5	44	46.5	44	44
Fertilizer, c. l.	53.5	50	55.5	55	55	55.5	55	55.5	59	62	59	62	62	62	62	31
Cabbage, onions, and potatoes, c. l.	86	86	95	95	95	95	95	95	101	101	101	101	106	106	106	106
Furniture, rated fourth class in southern classification, c. l.	66.5	57	73.5	62	73.5	62	73.5	62	76.5	66	66	66	80	69	80	69
Fruit jars (glass), c. l.	53.5	39	56.5	43	56.5	43	56.5	43	60	46	46	46	66.5	48	66.5	48
Glucose, c. l.	53.5	41	68.5	45	68.5	45	68.5	45	68.5	48	72	50	72	50	72	50
Grease, axle, c. l.	45.5	42	46.5	46	46.5	46	46.5	46	50	49	53.5	49	53.5	52	53.5	52
Iron, special, c. l.	53.5	46	56.5	50	56.5	50	56.5	50	63.5	53	66.5	53	66.5	56	66.5	56
Molasses and sirups, c. l.	48.5	49	51.5	53	53	53	53	53	57	57	57	57	52.5	50	57	52.5
Petroleum and its products, c. l.	55.5	58	66.5	64	66.5	64	66.5	64	72	68	75.5	68	75.5	66	75.5	66
Packing-house products, c. l.	66.5	50	72	55	83.5	55	83.5	55	76.5	59	88.5	59	88.5	71	88.5	71
Paints, dry or liquid, c. l.	53.5	39	60	43	63.5	43	60	43	58.5	46	66.5	46	78.5	48	66.5	48
Paper bags, c. l.	46	46	50	50	50	50	50	50	53	53	53	53	56	56	56	56
Paper, newsprint, c. l.	53.5	46	60	50	63.5	50	60	50	54	53	62.5	53	78.5	56	62.5	56
Pipe, sewer, c. l.	28.5	25	32	28	32	28	32	28	35.5	29	38.5	29	38.5	31	38.5	31
Plaster, wall, c. l.	24	17	23.5	19	25.5	19	32	19	38.5	20	34.5	20	32.5	21	34.5	21
Plaster board, c. l.	32	20	33.5	22	33.5	22	42	22	36.5	24	42.5	24	42.5	25	45.5	25
Roofing, prepared or composition, c. l.	39	39	43	43	43	43	43	43	50	46	55.5	46	55.5	48	55.5	48
Slate, c. l.	36.5	33	40	36	40	36	40	36	43.5	38	46.5	38	46.5	41	46.5	41
Soap, c. l.	55.5	41	55.5	45	55.5	45	55.5	45	58.5	48	62	58	62	50	62	50
Soda, caustic and sal, c. l.	44	38	48	38	48	38	48	38	43	40	46.5	40	46.5	54	46.5	54
Soda, silicate of, c. l.	38.5	35	40	35	40	35	40	35	43.5	38	46.5	38	46.5	42	46.5	42
Starch, c. l.	46	46	50	50	50	50	50	50	53	53	53	53	56	56	56	56
Stone, rough blocks, c. l.	32	20	33.5	22	33.5	22	34.5	22	36.5	24	42.5	24	42.5	25	45.5	25
Stone, dressed blocks, c. l.	25	25	28	28	28	28	28	28	33.5	26	45.5	26	45.5	31	45.5	31
Stone, monuments, c. l.	39	39	43	43	43	43	43	43	48	48	48	48	48	48	48	48
Stores and ranges, c. l.	56.5	68	90	74	90	74	90	74	95.5	79	100	79	100	83	100	83
Title, hollow building, c. l.	28.5	24	32	26	32	26	32	26	35.5	27	38.5	27	38.5	29	38.5	29
Wagons, farm, c. l.	62	55	68.5	60	68.5	60	68.5	60	78.5	64	82	64	82	68	82	68

Present and suspended rates from St. Louis, Mo., to the Yazoo & Mississippi Valley Railroad stations indicated.

[Blank spaces indicate no commodity rates published: Class rates apply.]

	Tunica, Miss.		Clarksdale, Miss.		Leland, Miss.		Rolling Fork, Miss.		Port Gibson, Miss.		Harrison, Miss.		Gloster, Miss.		Slaughter, La.	
	Pres-ent.	Sus-pend-ed.	Pres-ent.	Sus-pend-ed.	Pres-ent.	Sus-pend-ed.	Pres-ent.	Sus-pend-ed.	Pres-ent.	Sus-pend-ed.	Pres-ent.	Sus-pend-ed.	Pres-ent.	Sus-pend-ed.	Pres-ent.	Sus-pend-ed.
Agricultural implements, c. l., minimum weight, 24,000 pounds.....	63.5	55														
Asphalt, c. l.....	43.5	35	62	60	72	60	82	64	82	68	82	68	85.5	70	76.5	70
Bagging, c. l.....	43.5	36	38.5	38	48.5	38	56.5	40	53.5	42	53.5	42	58.5	44	49.5	46
Beverages, cereal, c. l.....		43		53	46.5	40	55.5	42	52	44	52	44	56.5	46	48.5	44
Brick, pressed or roated, c. l.....	24	19	25.5	21	27.5	21	28.5	22	30	23	30	23	31.5	24	30	24
Brick, fire, c. l.....	24	19	25.5	21	27.5	21	28.5	22	30	23	30	23	31.5	24	30	24
Brick, paving, c. l.....	24	19	25.5	21	27.5	21	28.5	22	30	23	30	23	31.5	24	30	24
Canned goods, c. l.....	72	50	60	55	73.5	55	83.5	59	85.5	62	85.5	62	93.5	64	80	64
Cotton ties, c. l.....	43.5	36	38.5	40	46.5	40	55.5	42	52	44	52	44	56.5	46	48.5	46
Fertilizer, c. l.....	22.7	25	23.3	28	28.7	28	31.3	29	32	31	32	31	32	32	32	32
Cabbage, onions, and potatoes, c. l.....	58.5	50	58.5	55	70	55	83.5	59	80	62	80	62	88.5	64	75.5	64
Furniture, rated fourth class in southern classification, c. l.....	112	86	93.5	95	116.5	95	136.5	101	130	106	130	106	143.5	111	123.5	111
Fruit jars (glass), c. l.....	76.5	57	65.5	62	78.5	62	93.5	66	89.5	69	89.5	69	98.5	72	83.5	72
Glucose, c. l.....		39	40	43		43		46		48		48		50		50
Grease, axle, c. l.....	66.5	41	60	45	70	45	83.5	48	80	50	80	50	88.5	52	75.5	52
Iron, special, c. l.....	50	42	46.5	46	56.5	46	70	49	66.5	52	66.5	52	75.5	54	62	54
Molasses and sirups, c. l.....	63.5	46	60	50	73.5	50	88.5	53	85.5	56	85.5	56	93.5	58	78.5	58
Packaging-house products, c. l.....	63.5	58	65.5	53	75.5	53		57		60		60		62		62
Paints, dry or liquid, c. l.....	65.5	39	50	43	60	43	75.5	50	72	62	72	62	80	74	78.5	74
Paper bags, c. l.....		50		53		53		40		48		48		50		50
Paper, wrapping, c. l.....		46		50		50		33		56		56		58		58
Paper, newsprint, c. l.....	31.5	25	32.5	28	35.5	28	37.5	29	39.5	31	39.5	31	40.5	32	38.5	32
Pipe, sewer, c. l.....		17		19		19		20		21		21		22		22
Plaster, wall, c. l.....		20	34	22		22		24		25		25		26		26
Plaster board, c. l.....	43.5	39	43.5	43		43		46		48		48		50		50
Roofing, prepared or composition, c. l.....	43.5	33	43.5	36	52	36	60	38	56.5	41	56.5	41	62	42	55.5	42
Slate, c. l.....	58.5	41	53.5	45	62	45	75.5	48	72	50	72	50	80	52	66.5	52
Soap, c. l.....		44		48		48		51		54		54		56		56
Soda, caustic and sal, c. l.....		35	43.5	38		38		40		42		42		44		44
Soda, silicate of, c. l.....		46	60	50		50		53		56		56		58		58
Starch, c. l.....		20		22		22		24		25		25		26		26
Stone, rough blocks, c. l.....		23		28		28		33		31		31		32		32
Stone, dressed blocks, c. l.....		39	73.5	43		43		49		48		48		50		50
Stone, monuments, c. l.....		68		74	86.5	74	102	79	98.5	83	98.5	83	106.5	86	93.5	86
Stoves and ranges, c. l.....		24	35	26		26		27		29		29		30		30
Tile, hollow building, c. l.....		68.5	62	60	72	60	85.5	64	82	68	82	68	90	70	76.5	70
Wagons, farm, c. l.....																

	Marks, Miss.		Tutwiler, Miss.		Ruleville, Miss.		Moorhead, Miss.		Lexington, Miss.		Benoit, Miss.		Hernanville, Miss.		Woodville, Miss.	
	Pres-ent.	Sus-pend-ed.	Pres-ent.	Sus-pend-ed.	Pres-ent.	Sus-pend-ed.	Pres-ent.	Sus-pend-ed.	Pres-ent.	Sus-pend-ed.	Pres-ent.	Sus-pend-ed.	Pres-ent.	Sus-pend-ed.	Pres-ent.	Sus-pend-ed.
Agricultural implements, c. l., minimum weight, 24,000 pounds.....	70	60	73.5	60	76.5	60	78.5	60	80	65	76.5	60	88.5	68	80	72
Asphalt, c. l.....	43.5	38	43.5	38	56.5	38	53.5	38	60	41	50	28	58.5	42	52	45
Bagging, c. l.....	43.5	40	43.5	40	53.5	40	55.5	40	60	43	48.5	40	56.5	44	50	47
Beverages, cereal, c. l.....	24.5	21	25.5	21	26	21	28	21	29.5	22	26.5	21	30.5	23	30	25
Brick, pressed or coated, c. l.....	24.5	21	25.5	21	26	21	28	21	29.5	22	26.5	21	30.5	23	30	25
Brick, paving, c. l.....	24.5	21	25.5	21	26	21	28	21	29.5	22	26.5	21	30.5	23	30	25
Canned goods, c. l.....	75.5	55	75.5	55	85.5	55	83.5	55	90	60	78.5	55	92	62	82	66
Cotton ties, c. l.....	43.5	40	43.5	40	53.5	40	52	40	60	43	48.5	40	56.5	44	50	47
Fertilizer, c. l.....	22.7	28	24	28	26	28	27.3	28	30.7	30	27.3	28	32	31	32	33
Cabbage, onions, and potatoes, c. l.....	58.5	55	58.5	55	83.5	55	83.5	55	86.5	55	75.5	55	86.5	62	80	66
Furniture, rated fourth class in southern classification, c. l.....	123.5	95	130	95	133.5	95	130	95	133.5	103	120	95	142	106	130	113
Fruit jars (glass), c. l.....	76.5	62	76.5	62	90	62	88.5	62	95.5	67	83.5	62	96.5	69	86.5	74
Glucose, c. l.....	43	43	43	43	43	43	43	43	43	47	43	43	43	48	48	51
Grease, axle, c. l.....	68.5	45	68.5	45	80	45	80	45	83.5	49	75.5	45	86.5	59	78.5	53
Iron, special, c. l.....	50	46	50	46	68.5	46	66.5	46	72	50	62	46	73.5	52	65.5	55
Molasses and sirups, c. l.....	63.5	50	63.5	50	85.5	50	83.5	50	90	54	78.5	50	92	56	82	59
Petroleum and its products, c. l.....	53	53	53	53	53	53	53	53	53	58	53	53	53	60	64	64
Packing-house products, c. l.....	68.5	64	72	64	73.5	64	75.5	64	85.5	69	75.5	64	86.5	71	80	76
Paints, dry or liquid, c. l.....	72	55	73.5	55	78.5	55	70	55	83.5	60	65.5	55	78.5	62	68.5	66
Paper bars, c. l.....	43	43	43	43	43	43	43	43	43	47	43	43	43	48	48	51
Paper wrapping, c. l.....	50	50	50	50	50	50	50	50	50	54	50	50	50	56	59	59
Paper, newsprint, c. l.....	50	50	50	50	50	50	50	50	50	54	50	50	50	56	59	59
Pipe, sewer, c. l.....	32.5	28	33.5	28	34	28	36.5	28	40	30	35.5	28	40	31	39.5	33
Plaster, wall, c. l.....	19	19	19	19	19	19	19	19	19	21	19	19	21	21	23	23
Plaster board, c. l.....	22	22	22	22	22	22	22	22	22	24	22	22	25	25	27	27
Roofing, prepared or composition, c. l.....	43	43	43	43	43	43	43	43	43	47	43	43	48	48	51	51
Slate, c. l.....	35	36	35	36	60	36	56.5	60	63.5	39	53.5	36	62	41	55.5	43
Soap, c. l.....	58.5	45	58.5	45	72	45	72	45	75.5	49	66.5	45	80	50	70	53
Soda, caustic and sal., c. l.....	48	48	48	48	48	48	48	48	48	52	48	48	54	54	57	57
Soda, silicate of, c. l.....	38	38	38	38	38	38	38	38	38	41	38	38	42	42	45	45
Starch, c. l.....	50	50	50	50	50	50	50	50	50	54	50	50	56	56	59	59
Stone, rough blocks, c. l.....	22	22	22	22	22	22	22	22	22	24	22	22	25	25	27	27
Stone, dressed blocks, c. l.....	28	28	28	28	28	28	28	28	28	30	28	28	31	31	33	33
Stone, monuments, c. l.....	43	43	43	43	43	43	43	43	43	47	43	43	48	48	51	51
Stoves and ranges, c. l.....	86.5	74	86.5	74	98.5	74	96.5	74	103.5	80	92	74	105.5	83	95.5	88
Tile, hollow building, c. l.....	26	26	26	26	26	26	26	26	26	28	26	26	29	29	31	31
Wagons, farm, c. l.....	75.5	60	78.5	60	82	60	82	60	85.5	65	76.5	60	88.5	68	80	72

It will be observed that there are proposed reductions almost without exception to the interior junction points and to the local stations on the Illinois Central and the Yazoo & Mississippi Valley; and that to points on the Mississippi and Yazoo rivers there have been material increases in most instances. To Greenwood, Miss., a point on the Yazoo River, the changes proposed are reductions, while to other river points they are increases.

By agreement of respondents and protestants the proposed rates on asphalt were withdrawn from this proceeding at the hearing and rates in lieu thereof have since been agreed upon and established to conform to the provisions of the fourth section, with the exception of certain rates from New Orleans and Gulf ports to points on the main line and branch lines of the Nashville, Chattanooga & St. Louis, east of Nashville, which have been separately disposed of in *Asphalt Rates from Gulf Ports*, 64 I. C. C., 395. The proposed rates on cement and certain other commodities have likewise been withdrawn; and rates agreed upon and satisfactory to most of the protestants established in conformity with the fourth section. The carriers' committees have been attempting and hold themselves in readiness hereafter to adjust, if possible, to the satisfaction of shippers certain other rates which were suspended in this proceeding.

BASIS FOR PROPOSED COMMODITY RATES.

In making rates to points in the Mississippi Valley it has been customary to apply the same rates from St. Louis and Louisville. This relationship was disrupted following the general increases of 1920, as the rates from Louisville were increased 25 per cent while those from St. Louis were increased $33\frac{1}{3}$ per cent. It is now proposed to restore the two points to an equality.

The general program underlying the proposed Mississippi Valley adjustment is the establishment of the general level of rates to the southeast and to the southwest. As a standard of the volume of rates the carriers have taken the rate from Louisville to Birmingham, or from St. Louis to Little Rock, Ark., the former as representing the rate plane to the southeast and the latter the rate plane west of the Mississippi River. The rates from Louisville to Birmingham have been adopted in most instances as the basis of the suspended rates from Louisville and St. Louis to Memphis, observing the rates from St. Louis to Little Rock as maxima. However, the suspended rates from Louisville and St. Louis to Memphis are not the same as the rates from Louisville to Birmingham, but are about 96 per cent of those rates, which is approximately the relationship which the

carriers' intended first-class rate, hereinafter referred to, of \$1.44 from Louisville and St. Louis to Memphis bears to the present first-class rate of \$1.52 from Louisville to Birmingham. With the commodity rates from Louisville to Memphis as the key, the commodity rates from other Ohio River crossings and related points to Memphis were made the same percentage of the first-class rates from such points to Memphis as the commodity rates, St. Louis or Louisville to Memphis, were of the first-class rate from St. Louis or Louisville to Memphis.

The class rates used by the carriers for the purpose of arriving at these commodity rates, however, are not the existing class rates but a somewhat higher scale which it was their plan to publish at the time the commodity rates were constructed. For example, the intended first-class rate from Louisville and St. Louis to Memphis was \$1.44, while the present first-class rates are \$1.345 from Louisville and \$1.435 from St. Louis. The rate columns of the following table show the intended first-class rates from Louisville, St. Louis, Cairo, Cincinnati, and Chicago, Ill., to the six major destination groups in the Mississippi Valley, which were used in determining the suspended commodity rates, and the relation columns show the percentage rate relationship of points of origin and destination with the basic or 100 per cent group from Louisville and St. Louis to Memphis:

To—	From Louisville and St. Louis.		From Cairo.		From Cincinnati.		From Chicago.	
	Rate. ¹	Relation. ²	Rate. ¹	Relation. ²	Rate. ¹	Relation. ²	Rate. ¹	Relation. ²
	Cents.	Per cent.	Cents.	Per cent.	Cents.	Per cent.	Cents.	Per cent.
Memphis group.....	144	100	111	77	159	111	171	119
Helena group.....	157	109	124	86	172	120	184	128
Greenville group.....	172	119	139	97	187	130	199	138
Vicksburg group.....	183	127	153	106	198	138	210	146
Natchez group.....	193	134	163	113	208	145	220	153
New Orleans group..	201	140	171	119	216	150	228	158

¹ First-class rates which carriers had intended to publish at the time of publication of commodity rates.
² Rate relationship (in percentage) of origins and destinations with St. Louis and Louisville to Memphis, which is the basic or 100 per cent group.

After the commodity rates were published the carriers decided to publish eventually a different scale of class rates which will not differ materially from the class rates now in effect. It is not their purpose, however, to change the basic commodity rates from Louisville to Memphis, although the percentage relation which the commodity rates will bear to the new class rates will be somewhat higher than it was to the rates used by the carriers as a basis for the suspended commodity rates. The following table shows the rate relationship.

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tionship of points of origin and destination which would result on the basis of the class rates now contemplated:

To—	From Louisville and St. Louis.		From Cairo.		From Cincinnati.		From Chicago.	
	Rate. ¹	Relation. ²	Rate. ¹	Relation. ²	Rate. ¹	Relation. ²	Rate. ¹	Relation. ²
	Cents.	Per cent.	Cents.	Per cent.	Cents.	Per cent.	Cents.	Per cent.
Memphis group	136	100	103	76	151	111	163	120
Helena group	149	110	116	86	164	121	176	130
Greenville group	163	120	130	96	178	131	190	140
Vicksburg group	175	129	145	107	190	149	202	149
Natchez group	185	136	155	114	200	147	212	156
New Orleans group ..	193	142	163	120	208	153	220	162

¹ First-class rates which carriers now intend to publish.

² Rate relationship (in percentage) of origins and destinations with Louisville and St. Louis to Memphis, which is the basic or 100 per cent group.

The percentage rate relationship of origin and destinations under the intended class rates is substantially the same as exists under the present class rates except as to Louisville which, as stated, now takes lower rates than St. Louis.

The grouping of destination territory in the Mississippi Valley observed generally in connection with the suspended commodity rates is the same as now prevails under the present adjustment of class rates which now conforms to the fourth section.

In establishing commodity rates in the past there has been no uniform method of determining origin and destination relationships, nor has there been any fixed and definite percentage relationship between the classes in this region. But now that class rates are related, one to the other, on a fixed percentage basis, it is urged that if, for instance, all of the class rates from Cincinnati to Memphis individually and in the aggregate were the same percentage of the class rates from Louisville and St. Louis to Memphis, class for class or in the aggregate, it is logical and proper that the commodity rates from Cincinnati to Memphis, as related to Louisville and St. Louis to Memphis, should reflect this same percentage. Thus it will be seen from the table above that the first-class rate from Cincinnati to Memphis is 111 per cent of the intended first-class rate from Louisville and St. Louis to Memphis, and the suspended commodity rates from Cincinnati to Memphis were therefore made 11 per cent higher than the suspended commodity rates from Louisville and St. Louis to Memphis. We have said in previous cases that the peculiar conditions warranting commodity rates negative the presumption of a necessarily close percentage relationship between classes and commodities. *Decker & Sons v. C., M. & St. P. Ry. Co.*, 30 I. C. C., 547, 551. But in a large and complex adjustment such as here presented, the method here employed in formulating commodity rates may, as a tentative plan, merit fair consideration.

Under the present adjustment of rates, the differential relationships to the river points are higher in some instances than to the interior points, while in other instances the reverse is true. Thus it is shown that on agricultural implements the present differential St. Louis over Cairo is 9.5 cents to Memphis, 16 cents to Corinth, 12.5 cents to Vicksburg, and 14 cents to Meridian. On the other hand the differentials, Chicago over St. Louis, are to Memphis, 8.5 cents; to Corinth, 5.5 cents; to Greenville, Miss., 8 cents; and to Aberdeen, Miss., 5 cents. On cotton ties, in carloads, the present differentials, Cincinnati over Louisville, are to Vicksburg, 3 cents, and to Meridian, 5 cents; Chicago over St. Louis, the differentials are to Vicksburg 10 cents, and to Meridian 6.5 cents. Furthermore, there is no uniformity in the present differential relationships as between the several river points or as between the several interior points. Respondents contend that in revising these rates in conformity with the fourth section it was obviously necessary to disregard the present differential relationships and to substitute therefor a scheme which would give equal treatment to river points and to the interior towns grouped therewith. They adopted the percentage plan as the most logical means of attaining this end. The revised differentials in some instances are higher and in others lower than the present differentials. On glucose (unmixed corn sirup), the spread between Chicago and St. Louis is reduced, but on fresh meats the spread is increased. In the former case the change, while satisfactory to Chicago, is objectionable to St. Louis; and in the latter case, while the change in relationship is satisfactory to St. Louis, it is objectionable to Chicago. Respondents contend that such objections reflect merely self-interest, and are directed to hold certain existing advantages. Respondents admit, however, that there are some inconsistencies in the differential relationships under the suspended rates which should be eliminated. For example, on canned goods the proposed differential, St. Louis and Louisville over Cairo to Memphis and Corinth is 10 cents, while to Greenville and Aberdeen, which are farther distant, the proposed differential is 11 cents. Respondents state that such inconsistencies will be corrected before the revised schedules, if approved, are permitted to become effective.

Numerous comparisons are submitted by respondents with a view to showing that commodity rates constructed on the basis proposed will not be higher, and in many instances will be lower, than the rates for like distances to points in the southeast. For example, it is shown that the suspended rates from Cincinnati to Memphis, 487 miles, are in many instances lower than the present commodity rates on the same articles from Cincinnati to Birmingham, 481 miles, and to Atlanta, Ga., 475 miles; that the suspended rates from Cairo to

Vicksburg, 389 miles, Jackson, Miss., 370 miles, and Meridian, 366 miles, are substantially the same as the present rates from Cairo, Evansville, Ind., and Louisville to Birmingham, an average distance of 362 miles, except where the rates to Vicksburg, Jackson, and Meridian are made with relation to certain westside points, in which instances they are lower than the rates to Birmingham; and that the suspended rates from St. Louis to Vicksburg, 525 miles, Jackson, 514 miles, and Meridian, 510 miles, are lower than the present rates from St. Louis to Birmingham, 481 miles. Similar comparisons are presented with respect to the suspended rates from Cairo and St. Louis to other destination groups.

RATES TO INTERIOR OR INTERMEDIATE POINTS IN THE MISSISSIPPI VALLEY.

The present rates to the intermediate or interior points in the Mississippi Valley, which are on a higher level than the rates at the Mississippi River points and at the Gulf ports, have been in effect at least since January 1, 1916, and many of them date back prior to that time, save for subsequent general increases. Respondents urge that they have not been found unreasonable and that in view of their long continuance there is a presumption that they are reasonable rates. They show, however, that under the suspended schedules the rates generally to the intermediate territory in the Mississippi Valley have been reduced, and that in some instances the reductions proposed are substantial.

In a few instances the rates to intermediate or interior territory in the Mississippi Valley have been increased. Notably is this true as to certain of the rates proposed on petroleum and petroleum products. For example, the present rate on petroleum from St. Louis to Jackson and Meridian is 36.5 cents, while the suspended rate is 57 cents. Respondents contend that the present rates on petroleum to points south of the Alabama & Vicksburg are abnormally low, and that it is proper that these rates should be increased to a more normal basis. While increases are in a few instances proposed in the rates to certain interior points in the Mississippi Valley, where the proposed rates are made with relation to the present rates from the Ohio River to Birmingham, in most cases the observance of this basis results in reductions in the present rates.

RATES FROM CHICAGO TO POINTS IN LOWER MISSISSIPPI VALLEY TERRITORY.

The suspended as well as the present rates from Chicago to points in the Mississippi Valley are made on a differential basis with relation to St. Louis, the movement over certain routes being through

Birmingham and Montgomery. Respondents show that the suspended rates to New Orleans are generally lower than the present rates to Birmingham and Montgomery, although the distance to New Orleans is 163 miles greater than to Montgomery and 260 miles greater than to Birmingham. The rates to Birmingham and Montgomery, however, are generally combination rates constructed on Memphis or Ohio River crossings. In *Montgomery Chamber of Commerce v. Director General*, 60 I. C. C., 203, we found that the rates on glucose from Chicago to Birmingham and Montgomery were unduly prejudicial to the extent that they exceeded the contemporaneous rates to New Orleans. Respondents assert that if the principle of that decision is applied to glucose and other commodities, and the rates to Birmingham and Montgomery have to be reduced so as not to exceed the suspended rates to New Orleans, general reductions will have to be made in the present rates from Chicago to Birmingham and Montgomery. Our decision in the case cited was based on the record then before us and the rate situation as it existed at that time, and the effective date of our order therein has been extended pending our decision in the instant proceeding.

RATES FROM CHICAGO TO THE MEMPHIS GROUP.

The rates under suspension from Chicago to Memphis are the same as the suspended rates from Cairo to New Orleans and Mobile, an average distance of 527 miles, which is also the distance from Chicago to Memphis. The suspended rates from Chicago to Memphis, if permitted to become effective, would reduce the present rates to points grouped therewith such as Grand Junction, Tenn., and Corinth, and points intermediate thereto such as Jackson, Milan, Dyersburg, Martin, and Rives, Tenn.

RATES FROM CENTRAL TERRITORY TO MISSISSIPPI VALLEY.

There are at the present time through rates in effect from central territory to the Mississippi River points and to the Gulf ports made on a differential basis over St. Louis. These rates are influenced by the present low rates from the Ohio River crossings and St. Louis to such points and are not applied to intermediate points, to which points the rates are on a relatively higher basis.

The suspended rates to the Mississippi River points and the Gulf ports are substantially lower than the present rates to intermediate points. The suspended rate on special iron from Pittsburgh, Pa., to New Orleans, for example, is 66 cents as compared with rates to inter-

64 I. C. C.

mediate points ranging from 68.5 cents at Grand Junction to 78.5 cents at Meridian and 83.5 cents at Brookhaven, Miss.

RATES TO NASHVILLE.

Fourth section order No. 7566, entered in connection with the *Murfreesboro Case*, denied the carriers authority to continue lower rates from Ohio River crossings and various other points of origin to Nashville than were contemporaneously maintained to intermediate points. The rates to intermediate points not having been found unreasonable by us in the case cited, the respondents, in revising their rates to conform to this order, attempted as far as possible to protect the level of rates at intermediate points by increasing the rates to Nashville to the level of the rates to the intermediate points. On a number of commodities, however, including grain and grain products, no change is made in the present rates to Nashville, but it is proposed for the time being to comply with the fourth section by making reductions at intermediate points. The explanation offered for failing to increase these rates is lack of time to effect the adjustment, and the record indicates that respondents intend later also to bring these rates up to the present level of the rates to intermediate points.

Fourth section order No. 7566 required the realignment of the rates from Memphis to Nashville, while fourth section order No. 7542, entered in the *Memphis Case*, required the realignment of the rates from Nashville to Memphis, and in revising the rates to conform to both of these orders reductions in some instances were made to Nashville. As a means of establishing a specific relationship between different Ohio River crossings, St. Louis and Memphis, the following intended first-class rates were used:

To Nashville from—	Intended rate.		Prescribed rate.	
	Rate.	Relation- ship to rate from Jeffer- sonville.	Rate in Nashville case.	Relation- ship to rate from Jeffer- sonville.
		<i>Per cent.</i>		<i>Per cent.</i>
Jeffersonville, Evansville, and Cairo.....	\$1.11	100	\$0.94	100
Cincinnati.....	1.34	121	1.15	122
Louisville.....	1.07	96	.90	96
St. Louis.....	1.50	135	1.29	137
Memphis.....	1.24	112	1.10	117

¹ Based 35 cents over Jeffersonville.

For comparison, the first-class rates prescribed from the above points to Nashville in the *Rates to and from Nashville*, 61 I. C. C., 64 I. C. C.

308, fixed during the hearing of the instant proceeding, and their percentage relationships are also shown in the above table.

Subject to certain exceptions, the commodity rates to Nashville were made percentages of the commodity rates from Jeffersonville and Cairo corresponding to the percentage relationship of the intended class rates shown in the above table. Respondents sought to make the basic rates under this adjustment from Jeffersonville to Nashville the same as the rates from Cairo to Memphis, based on a substantial parity of distance. Exceptions from this basis were made in some instances where it was found necessary to adjust the rates to Nashville in relation to more distant southeastern points such as Birmingham, and in other instances, where traffic moves through Nashville to Chattanooga, lower rates applying to the latter point were observed as maxima, no revision having as yet been made in the commodity rates to Chattanooga, although apparently increases in those rates are contemplated. It is shown that in many instances the suspended rates would result in substantial reductions in the present rates to intermediate points. Some of the commodity rates thus reduced are those on brick, iron and steel articles, oil, and woodenware.

The revision of rates thus far made from the southeast and south to Nashville was accomplished generally by the reduction of the rates to intermediate points to the Nashville basis. From the east to Nashville and intermediate points the present rates to Decatur were observed as maxima. The revision in rates from Ohio River crossings is reflected in the rates from western trunk line, central, and Buffalo-Pittsburgh territories, the general basis for making rates from these territories being the Ohio River combination. Respondents characterize the proposed adjustment as a temporary one, and insist that the suspended rates are still too low as compared with the rates between points in contiguous territory and to the southeast. As indicating that under the proposed revision the rates to Nashville are much lower than to points in southern territory generally respondents introduced exhibits in which the suspended commodity rates on a number of commodities to Nashville are compared with numerous commodity rates between points in the south for similar or shorter distances. The suspended rates on soap from Cincinnati to Nashville, for example, are compared with the present rates for shorter distances from Atlanta to various points in North and South Carolina, Tennessee, and Alabama, and with the rates from Richmond, Va., and Johnson City, Tenn., to points in North and South

Carolina. The following is a summary of these exhibits reproduced from respondents' brief:

Commodity.	Louisville to Nashville.		Cincinnati to Nashville.		Memphis to Nashville.	
	Sus-pended rate.	Average. ¹	Sus-pended rate.	Average. ¹	Sus-pended rate.	Average. ¹
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Soap and soap powders, c. l.	28	43	35	46	32	44
Iron and steel articles, c. l.	29	37.5	36.5	40.5	30	39
Fertilizer, c. l.	17	21.4	20.7	26.5		
Meats, fresh, c. l.	51	61.5			55	65
Vegetables, c. l.	37	44.5	44	52	40.5	50
Plaster board, c. l.					16	20
Agricultural cultivating implements, c. l.	37	46	47	54.5	40.5	52
Petroleum, c. l.	33	39	42	46	35	43
Coal tar, c. l.	23	31	23	34		
Lumber, c. l.	17	18.5				
Stone, ground, c.	14	15				
Glassware, c. l.	46	63	58	63	52	62

¹ Average of the rates on the same commodity for shorter distances between other southern points.

RATES FROM NASHVILLE TO MISSISSIPPI VALLEY POINTS.

The rates under suspension from Nashville to Mississippi Valley points were made largely on the same adjustment as that proposed from Cairo and Ohio River crossings to the Mississippi Valley. There were a number of exceptions to this general plan, but in the main the character of the Mississippi Valley adjustment is reflected in the basis used in arriving at the rates from Nashville, the rates from Nashville being related to the rates from Cairo by the percentage plan, by the use of the carriers' intended first-class rates from Nashville. The distances from Nashville to the major portion of the Mississippi Valley are greater than from Cairo, and the suspended rates from Nashville are, therefore, generally somewhat higher than the rates from Cairo. To Meridian, Hattiesburg, Miss., New Orleans, and Mobile, where the distances from Nashville are approximately the same as from Cairo, the proposed rates from Nashville are the same as the suspended rates from Cairo, the distances being as follows:

To—	From Nashville.	From Cairo.	To—	From Nashville.	From Cairo.
	<i>Miles.</i>	<i>Miles.</i>		<i>Miles.</i>	<i>Miles.</i>
Memphis, Tenn.	230	169	Brookhaven, Miss.	466	424
Felena, Ark.	291	235	Meridian, Miss.	357	366
Greenville, Miss.	381	320	Hattiesburg, Miss.	442	440
Vicksburg, Miss.	450	389	New Orleans, La.	559	554
Jackson, Miss.	412	370	Mobile, Ala.	480	501
Natchez, Miss.	510	466			

Many comparisons were offered of the suspended rates on representative commodities moving from Nashville to Memphis, west Tennessee junction points, and lower Mississippi River crossings with rates for similar distances between northern, western, and southern points to show the reasonableness of suspended rates from Nashville made on this basis. It is admitted that the suspended rates are in most instances materially higher than rates for similar hauls in central or trunk line territories, but it is contended that they should properly be so.

PROTESTANTS' TESTIMONY.

Many of the protestants, and especially those located at such river cities as New Orleans and Memphis, concede that the carriers are justified in removing the existing fourth section departures by making some increases in the present rates to the water points, but they maintain that the proposed rates are too high in view of the increases the carriers have already received under general order No. 28 and the increases of 1920. Other protestants are principally concerned with the proposed rates in so far as they disturb the present relationship in rates both as to points of origin and destination.

Protestants from central territory complain of the readjustment of rates from that section to Mississippi River points because no corresponding revision is proposed to the interior intermediate territory. The respondents call attention to the low measure of the rates from central territory to the river points and Gulf ports as compared with rates to or from the Ohio River. The order to revise rates to Mississippi Valley compelled a revision from Ohio River crossings. This necessarily required a corresponding revision from central territory. Respondents assert that all they could do during the limited time was to adjust the rates applying from central territory to the river points and Gulf ports, as we had indicated to them that they might make the revision temporarily and later realign the rates to intermediate points. Respondents contend that the rates from central territory, particularly that portion thereof known as the Buffalo-Pittsburgh district, are too low and that they reflect the water-competitive situation which carriers are not expected to observe for the future. Respondents state that opportunity to correct this adjustment will be afforded in connection with the southeastern readjustment.

Complaint is also made against the adjustment from western trunk line territory, including points in Wisconsin and the upper peninsula of Michigan, because in the revision from those points the grouping of destination points which the carriers observed in connection with rates from the Ohio River, St. Louis, and Chicago was not followed.

Respondents admit that with respect to points north of the Ohio River, St. Louis, and Chicago there are improper relationships as to certain points of origin and express their intention of correcting such situations if the base rates from the Ohio River, St. Louis, and Chicago are approved.

Protestants also attack the basis which the carriers have taken for their revision of rates on the ground that it is arbitrary to take the Louisville-Birmingham rates or the St. Louis-Little Rock rates as representative. They cite the cancellation of commodity rates and the substitution of class rates, where the interior points did not formerly enjoy commodity rates, as going beyond the requirements of the order; they complain of the cancellation of less-than-carload commodity rates; of the reestablishment of equal rates from St. Louis and Louisville; and cite the percentage increases involved in some cases where extensive blankets are broken into zones of destination.

Many exhibits were introduced by protestants to show that in numerous instances the rates proposed exceed the sum of the intermediates in violation of the fourth section of the act; but respondents do not ask for such relief and state that if any of the proposed rates exceed the aggregate of intermediates subject to the act, such condition has resulted from the hurried manner in which the rates were published and the same will be corrected.

Protestants also submit rate comparisons to show that the suspended rates to Gulf ports are higher than the ocean-and-gulf rates from eastern cities, and contend that the resulting advantage to eastern points, if the suspended rates become effective, will have a serious effect upon the ability of the western markets to compete at the port cities. While recognizing the importance of this testimony and the competition from the east, respondents assert that those water rates are not the criteria by which to determine the rates to the interior points in the Mississippi Valley, most of which are not accessible to water carriers from the east.

Some evidence was also submitted concerning the measure of the northbound versus southbound rates. Respondents state that they have undertaken as far as possible to make the northbound rates the same as the southbound rates and that such exceptions to this general rule as exist are due principally to the fact that the revision of rates has not been completed.

Instances have been cited by protestants where carriers have to some extent departed from the general basis observed in the construction of rates to the Mississippi Valley. On canned goods and furniture the suspended rates from St. Louis to the Mississippi Valley exceed the current rates to more distant points in Arkansas and

Louisiana. The explanation offered by respondents is that the exceptions were made because the resulting rates from application of the regular basis would have the effect of depressing unduly rates to interior Mississippi Valley and to the southeast. They assert that if the present rates to Arkansas and Louisiana are continued it will be the purpose of the Mississippi Valley lines to withdraw from participation in such rates on traffic through the southern crossings.

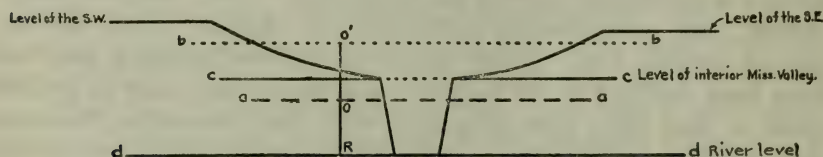
The position of certain protestants, the Southern Interior Traffic Association and the Jackson Association of Commerce, representing the interior shippers of western Tennessee, western Kentucky, and the interior points of the whole Mississippi Valley, is that we should immediately take such steps as are necessary to bring this case to the quickest possible determination in order that the long-existing discrimination against the intermediate points may be removed; that if the carriers have made out their case, that there shall be no difference in rate levels between the Mississippi Valley, southern, southeastern, and southwestern territories, we should vacate the suspension orders, even though the proposed readjustment may not have been justified in all respects, and permit the rates to go into effect as they have been proposed; with the reservation, however, that whatever injustice and inequalities may be found as to specific commodities or discriminations that have been created against the primary shipping points or the manufacturers shall be cured as quickly as possible by supplements to the tariffs. Not dissimilar is the attitude of the representatives of Monroe and Alexandria, La., who urge that the suspended rates be allowed to become effective, and correctives be applied later, if necessary.

One of the principal contentions of the protestants is that the operating conditions in the Mississippi Valley are more favorable than those in southwestern and southeastern territories, and that therefore the proposed increases should not be allowed. Considerable evidence was introduced by protestants in support of this contention. Evidence was also introduced by protestants concerning the increased revenues which, it is claimed, will accrue to the Mississippi Valley lines under the proposed adjustment.

The preceding sketches only the more salient objections urged to the carriers' general plan of revision, various localities and the shippers of specific commodities citing special objections to the proposed spreads in rates or the level of particular rates proposed.

As previously shown, respondents, in proposing the readjustment here under consideration for the purpose of removing the fourth section departures as required by our order No. 7542 in the *Memphis Case*, have proceeded largely on the general theory that the existing

rates to the southeast afford a conclusive standard of reasonableness. They assume, first, that the present rates from Louisville to Birmingham represent the general level of rates in the southeast; and, second, that those rates are reasonable not only as applied to the southeast but to the Mississippi Valley as well. If the existing rates to the southeast are to be accepted as reasonable rates to apply in the Mississippi Valley, the rate comparisons submitted by respondents would appear to justify respondents in increasing their rates to the Mississippi Valley to the general level proposed. The suspended rates have been constructed not only with a view to realigning the rates in the Mississippi Valley to conform to our fourth section order but in order to put in a basis of rates that will maintain as far as possible the existing level of rates to points in the southeast and southwest, enable the west-side lines to participate in traffic to the Mississippi Valley, and, at the same time, in accordance with our order No. 7542, observe the fourth section at intermediate points.



The problem of the valley and the possibilities of its solution may be represented by the diagram. The two highest horizontal lines represent the respective rate levels or planes west and east of the Mississippi Valley. Line *cc* represents the rate level of interior valley points, while the horizontal line *dd* at the bottom represents the river-point rate level. The immediate and direct purpose of the fourth section order is to bring *cc* and *dd* to a common level, such as *aa*. The carriers on the other hand have regarded the problem from the standpoint of amalgamating all the different levels on a plane corresponding to the line *bb*. They contemplate therefore a greater quantitative increase than is necessitated by the bare requirements of compliance with the fourth section as between interior points and river points. The necessary rise is indicated by *RO*; the carriers propose a rise indicated by *RO'*. Order No. 7542 was directed solely to the Mississippi Valley adjustment, and however desirable or necessary it may be that the rates to the three territories, the Mississippi Valley, the southwest, and the southeast, should be harmonized, we are not prepared in this proceeding, and without a more comprehensive survey and test of the rates to the southeast and to the general territory involved than this record permits, to accord our approval wholesale to such a blanket fixation of the level of rates throughout this general territory as is pro-

posed, on the presupposition that the existing rates to the southeast represent the final proper measure of such rates. Nor, as above shown, does the scope of this proceeding necessarily require such a far-reaching revision as is proposed by respondents. Our fourth section order, pursuant to which the suspended schedules were filed, merely required the realignment of rates to conform to the fourth section, but respondents concede that the proposed readjustment is designed not only for the protection of their revenues but also to remove inequalities and discriminations that violate the provision of the fourth section in related territories. Under such circumstances, and in the absence of convincing evidence of the reasonableness *per se* of the rates proposed, we are of opinion that the guiding rule to be followed in making the necessary revision to conform to the fourth section should be the maintenance of the aggregate revenue, giving such consideration as is reasonable to the effect of the rate changes on the revenues of particular lines in the same territory as well as to the burden which increases might cast on consumers; in other words, that, with the exceptions noted, increases made to low-rated points should not be of any greater volume than would be reasonably required to compensate for such reductions as are made to bring about the necessary readjustment. If greater increases are made than are necessary for this purpose the result will be to increase the general level of rates for which respondents have shown no financial necessity or justification, particularly in the light of the fact that the increases authorized in the general increase of 1920 were all that the carriers were shown to require in proportion to their necessities at that time. If after such an adjustment has been made, it develops that disparities exist with relation to the rates which may be continued in effect in adjacent territories, that situation can and should be dealt with by us on a record which will enable us to determine how the disparities shall be removed and to prescribe a reasonable basis of rates for the several territories or throughout the entire general territory to the extent that the transportation conditions are found to be fairly comparable.

So far as the situation of the carriers operating through the southeast to the Mississippi Valley is concerned, apparently they will require but little, if any, additional relief in order to enable them to continue to participate in competitive traffic to Mississippi Valley points, even if rates lower than those now proposed to the latter points are prescribed. Higher rates to intermediate points in the southeast than to low-rated points in the Mississippi Valley are now authorized by fourth section orders or protected by appropriate applications, and in such cases any increases that may be authorized

at the river points can apparently be made without further authority, as such increases would result in the reduction or removal rather than in the increase of fourth section departures.

As previously stated, the carriers operating west of the Mississippi River compete with the carriers operating in the Mississippi Valley for traffic between certain of the more important river points at rates which are now the same as those in effect over the east-side lines. These west-side river rates are considerably lower than the rates in effect from, to, and between intermediate points west of the river. The west-side lines have been denied fourth section relief wherewith to maintain lower rates between the river points than at intermediate points, and it is urged that if rates are established between the river points which are decidedly lower than the rates now maintained by the west-side lines at intermediate points, the west-side lines will be compelled either to retire from further participation in the competitive traffic between the river points or to reduce their rates to and from intermediate interior points so that they will not exceed the rates between the river points. The latter course, it is stated, will result in a serious depletion of their revenues.

Respondents contend that the rates between the river points, and applying to and from points in the Mississippi Valley generally, should be increased so as to enable the west-side carriers to engage in traffic between the river points in compliance with the fourth section at the same rates as those maintained by the east-side lines, and to continue their present higher rates at intermediate points, although such rates are higher generally than the rates east of the river. In other words, it is contended that as the west-side carriers are prohibited, by reason of the denial of fourth section relief, from meeting the rates of the east-side lines at competitive points on the river and maintaining their higher rates at intermediate points, the rate level of the east-side lines which has always been on a lower basis should be raised approximately to grade into the level of the west-side rates, so that the west-side lines may continue in the river traffic and in traffic to the southeast without reducing their rates at intermediate points west of the river.

The traffic of the west-side lines constitutes a small percentage of the entire Mississippi Valley traffic. To adopt the principle contended for by respondents is to say that the rates on the far larger percentage of all the traffic in the Mississippi Valley should be higher than they otherwise would be merely to permit the west-side carriers to haul the remainder without sacrificing their rates to intermediate interior points. The obvious answer to this contention is that if, in the situation disclosed, the west-side lines are unable or unwilling to meet maximum reasonable rates for the east-side lines at competitive points and observe those rates as maxima at inter-

mediate points, they should retire from further participation in that traffic and may not equitably insist that they should be permitted to continue to compete for this traffic at the expense of unwarranted increases in the rates throughout the entire Mississippi Valley. It is one thing to give consideration to the condition of all competing carriers in fixing rates between competitive points on a reasonable basis, but quite a different matter to lift the entire rate structure of an important territory solely for the purpose of enabling carriers operating through a different and higher-rated territory to compete at border points with the carriers operating within that territory on a rate equality without reducing the rates at intermediate points in such higher-rated territory.

In determining the extent of the increases which should be permitted to the river points in a rate revision conforming to the principles announced herein, we are not wholly without a guide, so far as the effect on the carriers' revenue is concerned. Approximately two months before the hearing in this proceeding we suggested to respondents that in order that we might be in a position to give proper consideration to the necessity for the proposed increases, and determine the probable effect of the proposed readjustment upon the carriers' revenues, we should be furnished with a statement showing the tonnage of some of the more important commodities which moved between the points involved during a representative period. We also said:

You are therefore requested to prepare and submit as an exhibit at the hearing in this matter a statement showing the tonnage of the following commodities for one representative week in each quarter of the year 1920, from representative points of production or shipment to several of the Mississippi River points and Gulf ports to which the proposed increased rates are published in comparison with the tonnage to intermediate points where reductions would be made.

Commodities.

Agricultural implements, CL	Glucose and corn syrup, CL
Bags and bagging, CL	Grain and grain products, CL
Brick and other clay or earthen products, CL	Iron and steel articles, CL
Canned goods, CL	Meats, fresh, CL
Cement, CL	Molasses and syrup, CL
Cotton ties and buckles, CL	Packing house products, CL
Cotton seed and cotton seed products, CL	Paper and paper articles, CL
Fertilizer, CL	Petroleum and products, CL
Fruits and vegetables, CL	Salt, CL
Furniture, CL	Soap, CL
	Soda, bicarbonate, CL

It is suggested that the above statement should include the movement of the aforesaid commodities from and to the following points, but if that is impracticable in view of the short time intervening before the hearing, it will be

sufficient to show the tonnage received at representative river and intermediate points.

It is also suggested that if it will be more convenient to furnish statistics of the tonnage of the movement of the above commodities for any other period or periods than those suggested above which will afford a fair criterion of the relative volume of the traffic to intermediate and depressed rate points it will be satisfactory if statistics of the movement for such period or periods are shown.

In accordance therewith the carriers furnished statements showing the carload movement of these commodities to the river points and to the intermediate territory for the second week in each of the months of January, April, July, and October, 1920.

Serious objection was offered by the carriers to the use of these statements as bases for determining the probable effect of the proposed rates upon their revenues and much testimony was introduced by them with a view to discrediting the sufficiency of the figures shown, and minimizing the significance that might attach to them. One of the principal objections offered was that the statements do not cover a sufficient period to be representative, as many of the commodities are of seasonal movement, and the statements do not cover the periods in which they move in greatest volume, especially to the intermediate territory. But they offered no statements in lieu thereof or supplemental thereto which would have shown more accurately the information requested. It will be observed that the carriers were not required to confine these statistics to the tonnage moving during the periods suggested. They were fully advised of the purpose for which the information was to be used and were at liberty, and in fact were expressly invited, to submit statistics for different periods if the statistics for such other periods would represent more accurately the comparative movement of traffic to the intermediate territory and the low-rated points.

Another objection made by the carriers to these statements is that the export traffic is not separated from the domestic traffic. This, it is claimed, detracts from the value of the figures shown, inasmuch as the rates on export traffic are not involved in this proceeding. That is true as to traffic moving on export rates, the measure of which has been influenced by other considerations than competition on the Mississippi River, such as the necessity of maintaining the port of New Orleans and other Gulf ports on a comparative equality with the Atlantic ports. Traffic for export moving on domestic rates to New Orleans or other Gulf ports, however, is involved in this proceeding, and the tonnage of such traffic should have been included in these statements. It was not necessary, therefore, nor would it have been proper, to separate the latter from the purely local traffic to New Orleans. The export traffic moving on export rates should have been separated, and apparently could have been so separated without serious difficulty.

Another criticism made of the statements submitted is that much of the grain that is shown as having moved to Memphis and to points in the Mississippi Valley is really grain that was reshipped from Memphis and has, therefore, been counted twice—once in the receipts to Memphis and again in the receipts at the intermediate points. It is not quite clear, however, why these shipments should have been counted twice, as the carriers should have in their possession the information showing what proportion of traffic received by them is reshipped. The reshipped tonnage could readily have been deducted from the tonnage which should properly have been shown as destined to Memphis.

In further support of their contention that no intelligent conclusion can be reached as to the effect of the proposed readjustment on their revenues, respondents urge that the readjustment will force a diversion of traffic to the interior points. It is not improbable that when the present rates are revised so as to remove the discrimination which has so long existed against the interior points in favor of the river points, some of the business which has heretofore gone to the river points will be diverted to the interior points, thereby increasing the tonnage to those points and reducing the movement to the river points. However, it is hardly to be expected that any considerable portion of the tonnage which at present moves to the river points will immediately be diverted to the interior. Furthermore, even if the traffic is diverted to interior points the carriers' revenues will in many instances be increased by reason of the fact that the traffic will move to the interior points under much higher rates than now apply to the river points.

Making due allowance for the brief time allowed for the preparation of the data requested, and for whatever infirmities may attach thereto, their entire rejection would deprive us of information which is helpful in a proper adjudication of the case. Under the circumstances, and having in mind that the burden of justifying the proposed increased rates is on respondents, we are of opinion that the tonnage figures submitted may not unfairly be considered in arriving at a conclusion as to the proper adjustment which should be made in complying with the fourth section requirements, giving due consideration to the rate comparisons and other evidence adduced pro and con as to the justification of the proposed increased rates. We have therefore made analyses of the tonnage figures submitted with respect to packing-house products, fresh meats, and a number of other important commodities.

PACKING-HOUSE PRODUCTS.

The tonnage statistics show the movement on packinghouse products from all points to the Mississippi Valley for one week in each of the months of January, April, July, and October, 1920, as follows:

Via—	To river points.	To interior points.
Illinois Central.....	2,947,288 pounds.	48,885 pounds.
Yazoo & Mississippi Valley.....	1,884,381 pounds.	98,122 pounds.
Mobile & Ohio.....	806,852 pounds.	451,084 pounds.

The Mobile & Ohio exhibit shows, to river points, 961,082 pounds, but 154,230 pounds originated at points not involved in this proceeding.

The Mobile & Ohio exhibit shows total movement to interior points 972,434, but analysis of exhibit shows only 490,334 pounds, 39,250 of which originated at points not involved in this proceeding.

The Yazoo & Mississippi Valley exhibit shows movements to Greenville and Yazoo City, Miss., aggregating 369,969 pounds, which is included in the total tonnage to interior points. To both of these points it is proposed that the rates shall be increased. This tonnage properly, therefore, should have been included in the tonnage to the river points, as the carriers' revenues would be increased rather than diminished under the proposed rates to these points. It is not included in any of the above figures.

In the table below are shown (1) the total tonnage of packing-house products from all points of origin received at stations in the Mississippi Valley during the above periods; (2) the present and suspended rates from St. Louis to the points to which this traffic moved; (3) the increases or reductions in the rates from St. Louis to each of these points under the suspended rates; and (4) the increase or reduction in revenue that would result if the suspended rates were applied to tonnage of an equal amount moving to the same points. The tonnage from all points has been used to determine the relative movement to the river and interior points, and the rates from St. Louis to New Orleans as representative of the rate changes that would occur in the rates from other points under the carriers' proposals.

To—	Tonnage all points during second week, Jan., Apr., July, and Oct., 1920.	Present rate from St. Louis.	Suspended rate from St. Louis.	Increase in rate.	Reduction in rate.	Increase in revenue.	Reduction in revenue.
	<i>Pounds.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>		
Memphis, Tenn.....	395,872	35.5	53	17.5		\$692.78	
Helena, Ark.....	35,130	43.5	58	14.5		50.94	
Clarksdale, Miss.....	98,122	65.5	64		1.5		\$14.72
Greenwood, Miss.....	333,294	60	64	4		133.32	
Yazoo City, Miss.....	35,575	63.5	68	4.5		16.46	
Greenville, Miss.....	705,986	55.5	64	8.5		600.09	
Tupelo, Miss.....	94,640	60	58		2		18.93
West Point, Miss.....	122,774	66.5	64		2.5		30.69
Grenada, Miss.....	12,825	66.5	64		2.5		3.20
Meridian, Miss.....	233,670	72	68		4		93.47
Jackson, Miss.....	36,060	72	68		4		14.4
Vicksburg, Miss.....	429,224	55.5	68	12.5		536.53	
Natchez, Miss.....	384,337	55.5	71	15.5		595.72	
Baton Rouge, La.....	308,817	55.5	74	18.5		571.31	
New Orleans, La.....	2,968,175	55.5	74	18.5		5,491.12	
Mobile, Ala.....	806,852	55.5	74	18.5		1,492.67	
Total.....				132.5	16.5	10,180.94	175.43
Average.....				13.25	2.75		

The tonnage to the river points was almost 10 times that to the interior points and the average reduction in rates as proposed to the interior points is 2.75 cents while the average increase to the river points, including Greenwood and Yazoo City, is 13.25 cents. On the basis of the above tonnage figures the increase in revenue would be more than 58 times the amount of reduction. Packing-house products may be assumed to move regularly and in fairly constant volume, so that the figures are not subject to any great extent to the criticism as to certain commodities that the movement is seasonal and the period taken not therefore representative.

A 60-cent rate to Baton Rouge, New Orleans, and Mobile, and rates to points north thereof, made the same percentage of the 60-cent rate that the first-class rates to such points are of the first-class rates to New Orleans would produce the following:

To—	Rate from St. Louis.	Reduction under present rate.	Increase over present rate.	Increase in revenue.	Reduction in revenue.
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>		
Memphis, Tenn.....	42		6.5	\$257.32	
Helena, Ark.....	46		2.5	8.78	
Clarksdale, Miss.....	51	14.5			\$142.28
Greenwood, Miss.....	51	9			299.96
Yazoo City, Miss.....	54	9.5			34.75
Grenada, Miss.....	51	15.5			19.88
Tupelo, Miss.....	46	14			132.50
West Point, Miss.....	51	15.5			190.30
Greenville, Miss.....	51	4.5			317.69
Meridian, Miss.....	54	18			420.61
Jackson, Miss.....	54	18			64.91
Vicksburg, Miss.....	54	1.5			64.38
Natchez, Miss.....	57.5		2	76.87	
Baton Rouge, La.....	60		4.5	138.97	
New Orleans, La.....	60		4.5	1,335.68	
Mobile, Ala.....	60		4.5	363.08	
Total.....				2,180.70	1,687.26

The net increase shown for the four-week period is \$493.44. On a year's business, assuming that the traffic moved in the same volume and to the same destinations, this would amount to an increase of approximately \$6,500.

The tonnage figures on which the above tables are based were submitted by the Illinois Central, Yazoo & Mississippi Valley, and Mobile & Ohio, which handle the bulk of the packing-house products traffic in this territory. On basis of the 60-cent rate to New Orleans and the movement shown, the only point on the Mobile & Ohio to which rates would be increased would be Mobile. Reductions would be made in the rates to Tupelo, West Point, and Meridian, and the net result would be a reduction for the entire year of about \$5,000 in the revenues of the Mobile & Ohio. On the other hand, the aggregate revenues of the Illinois Central and the Yazoo & Mississippi

Valley would be increased about \$11,000 a year. It should also be observed that the Mobile & Ohio in connection with other carriers is in a position to handle traffic from Cairo, St. Louis, Chicago, and other points north of the Ohio River to New Orleans and other Gulf ports, and to Memphis and other Mississippi River points.

Similar analyses of the tonnage figures furnished by the same carriers on fresh meat, canned goods, bags and bagging, paper and paper articles, including newsprint paper, and glucose are shown in the appendix. The following table shows the aggregate amount of the increase and decrease in revenue which would result from the suspended rates on these commodities on basis of the tonnage figures and using the rate from St. Louis to New Orleans as representative; also what the effect on the carriers' revenue would be under rates materially lower than the suspended rates:

	Present rate.	Sus- pended rate.	Increase in revenue.	Reduc- tion in revenue.	Increase in revenue on basis of rates shown.	Reduc- tion in revenue.
	<i>Cents.</i>	<i>Cents.</i>				
Fresh meat.....	80	96	\$9,357.92	\$786.75	80 cents.....\$2,260.08	\$1,863.78
Canned goods.....	50	64	2,082.30	385.34	56 cents.....840.67	648.24
Bags and bagging.....	28.5	46	4,511.84	310.29	32 cents.....1,077.02	743.56
Paper and paper articles, including newsprint pa- per.....	42	58	4,792.93	139.21	42 cents.....570.50	391.97
Glucose.....	32	50	5,222.93	89.56	35 cents.....605.90	467.24

Respondents admit that there are numerous imperfections in the proposed adjustment, particularly with respect to the relationship of rates from points north of the Ohio River, St. Louis, and Chicago, but urge that in most instances where improper relationships would result they can be adjusted by the carriers and shippers without burdening us with fixing the proper relationships in each and every instance. They ask, however, that we fix the base rates from the Ohio River, St. Louis, and Chicago and the relationships as to destinations.

Giving full consideration to the effect of possible diversions of traffic resulting from the readjustment, and to the variations that may reasonably be expected to have occurred if the figures for the entire year had been available instead of for a four-week period, and to the other objections made by respondents to the use of these tonnage figures, we are of opinion and find that, except as hereinafter noted, respondents have not justified the suspended rates now under postponement, and that for the purpose of revising such rates to conform to the provisions of the fourth section, rates should be established which shall not exceed those constructed on the bases indicated below, observing the following base rates from St. Louis

and Louisville to New Orleans as maxima. For convenient reference the suspended rates are shown in the last column of the table.

Commodity.	Prescribed rate.	Suspended rate.
	<i>Cents.</i>	<i>Cents.</i>
Agricultural implements, c. l., min. weight, 24,000 lbs.....	61	70
Bagging, c. l.....	37	46
Beverages, cereal, c. l.....	53	62
Brick, pressed or coated, c. l.....	24	24
Brick, fire, c. l.....	24	24
Brick, paving, c. l.....	24	24
Canned goods, c. l.....	57	64
Cotton ties, c. l.....	37	46
Fertilizer, c. l.....	29	32
Cabbage, onions, and potatoes, c. l.....	57	64
Furniture, rated fourth class in southern classn., c. l.....	97	111
Fresh meat, c. l.....	88	96
Fruit jars (glass), c. l.....	64	72
Glucose, c. l.....	41	50
Grease, axle, c. l.....	52	52
Iron, special, c. l.....	46	54
Molasses and sirup, c. l.....	54	58
Petroleum and its products, c. l.....	46	62
Packing-house products, c. l.....	63	74
Paints, dry or liquid, c. l.....	50	64
Paper bags, c. l.....	47	50
Paper, wrapping, c. l.....	47	58
Paper, newsprint, c. l.....	47	58
Pipe, sewer, c. l.....	32	32
Plaster, wall, c. l.....	22	22
Plaster board, c. l.....	26	26
Roofing, prepared or composition, c. l.....	43	50
Slate, c. l.....	38	42
Soap, c. l.....	47	52
Soda, caustic and sal, c. l.....	44	56
Soda, silicate of, c. l.....	44	44
Starch, c. l.....	54	58
Stone, rough blocks, c. l.....	26	26
Stone, dressed blocks, c. l.....	32	32
Stone, monuments, c. l.....	50	50
Stoves and ranges, c. l.....	75	86
Tile, hollow building, c. l.....	30	30
Wagons, farm, c. l.....	61	70

Carload commodity rates from St. Louis and Louisville to New Orleans on all other articles except grain and grain products, named in the schedules suspended and now under postponement, shall not exceed 85 per cent of the suspended commodity rates from St. Louis to New Orleans.

Rates on said commodities from St. Louis to points other than New Orleans in the Mississippi Valley shall not exceed rates which bear the same percentage relationship to the rates to New Orleans as the first-class rates from St. Louis to such points bear to the contemporaneous first-class rates to New Orleans.

Rates on said commodities from Cincinnati and other Ohio River crossings and from Chicago to the Mississippi Valley shall not exceed rates which bear the same percentage relationship to the rates from St. Louis as the first-class rates from such points bear to the contemporaneous first-class rates from St. Louis to the same points.

Rates on said commodities between Nashville, on the one hand, and Ohio and Mississippi river crossings and related points, on the other, shall not exceed rates which bear the same percentage relationship

to the first-class rates to and from Nashville that the rates prescribed herein from St. Louis and Louisville to New Orleans bear to the contemporaneous first-class rates from St. Louis to New Orleans.

In those instances where rates published on commodities are constructed on the basis of differentials over the rates to and from the basing points to and from which rates are prescribed herein, the rates from said differentially related points shall be revised so as to preserve the existing relationships except where otherwise provided herein. On fresh meats and packing-house products, for example, from Missouri River and interior Iowa points to the Mississippi Valley the existing relationship between those packing-house points and St. Louis should be preserved.

We further find that rates constructed on this basis will be just and reasonable for the purpose of effecting the required revision of rates under the fourth section. Our findings, however, are without prejudice to any different conclusions that may be reached on a more comprehensive record dealing with the measure of such rates for particular movements, with the general level of rates in the Mississippi Valley or with the relationship of such rates to the rates to and from points in the southeast and the southwest. The suspended northbound rates from Mississippi Valley, in so far as they do not exceed southbound rates between the same points constructed on the bases herein prescribed, have been justified.

PROPORTIONAL OR RESHIPING RATES ON GRAIN AND GRAIN PRODUCTS.

The formula and the percentage basis referred to above, page 315, were not used by the carriers in fixing the rates under suspension on grain and grain products. Base or key rates from Omaha, Nebr., to New Orleans and Memphis were first determined, and rates to other points of destination were related thereto. The rate to New Orleans was fixed largely in relation to existing rates to Alexandria, La., and other intermediate points west of the Mississippi River, which rates we had found in *Omaha Grain Exchange v. C., R. I. & P. Ry. Co.*, 53 I. C. C., 249, had not been shown to be unreasonable for movement to the southwest. The rate to Memphis also is said to have been fixed by the west-side lines. With respect to traffic to the Mississippi Valley, the relationship between the several primary grain markets was continued substantially as it exists to-day, with a view to enabling Omaha, Kansas City, St. Louis, Cairo, Memphis, and other so-called primary markets to continue to market grain in the Mississippi Valley on the same relative adjustment as exists under the present rates. The following table shows the present and suspended rates from Omaha to New Orleans and Memphis, and to

points in the Mississippi Valley south of Memphis; also the present rates to certain intermediate west-side points:

Omaha to—	Distance.	Present rate.	Suspended rate.
	<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>
New Orleans.....	1,060	39	54
Gulfport.....	1,036	39	54
Mobile.....	1,048	39	54
Natchez.....	962	39	52.5
Brookhaven.....	930	52	52.5
Hattiesburg.....	965	52	52.5
Vicksburg.....	885	39	50.5
Jackson.....	875	50.5	50.5
Meridian.....	911	50.5	50.5
Greenville.....	816	39	49.5
Winona.....	818	48.5	49.5
Aberdeen.....	806	48.5	49.5
Holly Springs.....	717	46	44
New Albany.....	750	47	44
Tupelo.....	776	47	44
Memphis.....	665	25.5	30.5
Shreveport.....	759	49.5	-----
Monroe.....	856	49.5	-----
Alexandria.....	877	50.5	-----

The suspended rates from Kansas City are 1 cent less than the rates from Omaha, this being the relationship prevailing under the present adjustment to the Mississippi Valley. This relationship has been approved by us in *Kansas City Transportation Bureau v. A., T. & S. F. Ry. Co.*, 16 I. C. C., 195, and *Board of Trade of Kansas City v. St. L. & S. F. R. R. Co.*, 32 I. C. C., 297.

The present proportional or reshipping rate from the Missouri River to St. Louis is 15.5 cents. The proportional or reshipping rates from St. Louis to the Mississippi Valley are merely balances of the through rates from the Missouri River after deducting the proportional or reshipping rate from the Missouri River to St. Louis. The suspended rate from St. Louis to Memphis, for example, is 15 cents, representing the difference between the suspended rate of 30.5 cents from Omaha to Memphis and the present proportional rate of 15.5 cents from Omaha to St. Louis.

The present as well as the suspended rates from Illinois grain-producing points to points in the Mississippi Valley are constructed on the basis of the inbound rates to East St. Louis and Cairo, respectively, plus the proportional rates south of each of those gateways. The same proportional rates apply south of East St. Louis and Cairo, respectively, on Illinois grain as on grain which originates west of the Mississippi River; and as the through rates from the Illinois fields as well as the western producing fields to the Mississippi Valley break on East St. Louis and Cairo, the relationship as between the western and Illinois fields is reflected in the measure of the inbound rates from the respective fields to St. Louis and Cairo.

The proportional or reshipping rates from Cairo to the Mississippi Valley under both the present and suspended adjustments are made

3.5 cents less than the rate from St. Louis. This represents the difference between the inbound rates to St. Louis on the one hand and Cairo on the other, thereby enabling the dealers at Cairo to draw in grain for reshipping to the Mississippi Valley on the same basis as dealers located at St. Louis and other primary markets.

Similarly, the present and suspended reshipping rates from Memphis to the Mississippi Valley south thereof are made as much lower than the rates from St. Louis or Cairo as the inbound rates to Memphis are higher than the rates to St. Louis or Cairo.

Many protests against the proposed increased rates on grain were made on behalf of points of origin as well as points of destination. It is contended generally that the increases are greater than necessary to conserve the revenues of the carriers. The New Orleans, Louisville, Cairo, and St. Louis protestants suggest a rate of 45.5 cents from Omaha to New Orleans or 30 cents from St. Louis to New Orleans, with rates to and from other points properly graded, as a basis sufficiently high to meet the needs of the case.

Interior Mississippi points represented by Hattiesburg, Laurel, and Brookhaven urge that the proposed rates are too high; but say that, if properly adjusted, they will remove the inequalities that have been in existence and complained of for years.

Kansas City protestants urge that the present rates to intermediate points are unreasonably high, and that, therefore, the carriers are only justified in making comparatively small increases to the river points, with corresponding reductions to intermediate points. Their most vigorous protest, however, concerns the wholesale disturbance of relationships that would result, as to points of origin, if the suspended rates are allowed to become effective. It is said that whereas rates from Kansas City are now less than the rates from Omaha by 4 cents on traffic to Arkansas intermediate points, and 7.5 cents on traffic to Louisiana intermediate points, the proposed basis from Omaha and Kansas City to New Orleans, with a differential of but 1 cent between these points of origin, would, if graded back through intermediate points west of the Mississippi River, place Kansas City at such a disadvantage as compared with Omaha as to bar its dealers from handling business to that territory. They also object to the failure of respondents to make the same increase in rates from country shipping points as from Kansas City, thus disturbing long-existing relationships. The protest of Omaha is similar to that of Kansas City in that it is claimed that the suspended rates from points in the grain-growing districts of Nebraska will shut Omaha out of the handling of grain from that area when destined to New Orleans or the southeast.

Memphis complains that the suspended rates, while preserving the present equalization of Memphis with the Cairo, St. Louis, and

Evansville markets on grain from the Illinois fields to the Mississippi Valley, will disturb the present equalization of those markets on grain to the southeast and the southwest. This is due to the fact that under the proposed readjustment the inbound rates from Illinois to Memphis are increased 5 cents while no increase is made in the inbound rates to the other markets named and no reduction is made in the outbound rates from Memphis corresponding to the increase in the inbound rates to that point.

The tonnage statistics submitted by the Illinois Central, Yazoo & Mississippi Valley, and Mobile & Ohio show a total movement of grain and grain products of 144,660,861 pounds to the river points as compared with a movement of 58,552,888 pounds to other destinations in the Mississippi Valley. From a consideration of detailed tonnage figures submitted, and giving due weight to the various criticisms made of these statistics, we are of opinion that an increase of 8 cents in the present reshipping rate from St. Louis to New Orleans instead of 15 cents as proposed by the carriers, and 2.5 cents in the present reshipping rate from St. Louis to Memphis instead of 5 cents as proposed by the carriers, would suffice to offset the probable reduction in the carriers' revenues due to the decreases in the rates to intermediate points. This would result in reshipping rates of 31.5 cents from St. Louis to New Orleans and 12.5 cents from St. Louis to Memphis.

The following table shows the present and suspended rates from St. Louis to representative destinations in the Mississippi Valley; also what the rates would be if constructed on a base rate of 31.5 cents from St. Louis to New Orleans, observing the same destination groupings and percentage relationships as obtain under the suspended rates:

St. Louis to—	Present rate.	Suspended rate.	Rate based on 31.5- cent rate, St. Louis to New Orleans.
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
New Orleans.....	23.5	38.5	31.5
Gulfport.....	23.5	38.5	31.5
Mobile.....	23.5	38.5	31.5
Natchez.....	23.5	37	30.5
Brookhaven.....	36.5	37	30.5
Hattiesburg.....	36.5	37	30.5
Vicksburg.....	23.5	35	28.5
Jackson.....	35	35	28.5
Meridian.....	35	35	28.5
Greenville.....	23.5	34	28
Winona.....	33	34	28
Aberdeen.....	33	34	28
Holly Springs.....	30.5	28.5	23.5
New Albany.....	31.5	28.5	23.5
Tupelo.....	31.5	28.5	23.5
Memphis.....	10	15	12.5

While it may be, as contended by the Kansas City protestants, that, in view of the changed conditions under which west-side lines must observe the rates from the Missouri River to the Mississippi River as maxima at intermediate points in the southwest, some increase should properly be made in the present differential of 1 cent Kansas City under Omaha on traffic to the river points, we are of opinion that for the purpose of the proposed readjustment to the Mississippi Valley the carriers are justified in maintaining the present differential relationship between Omaha and Kansas City on traffic to that territory. If the west-side lines should withdraw from participation in the rates approved herein to the river points no occasion would arise for changing the existing relationship between Omaha and Kansas City on traffic to the southwest. If they continue to participate in the river traffic the question will then arise as to the propriety of the differential relationship which should obtain between Omaha and Kansas City in the rates to the intermediate territory in Arkansas and Louisiana. That matter should properly be made the subject of a separate proceeding.

We find that the suspended rates on grain and grain products to Mississippi Valley points have not been justified and that for the purpose of complying with the fourth section requirements reshipping rates on grain and grain products from St. Louis to Memphis and New Orleans should not be increased to exceed rates of 12.5 cents to Memphis and 31.5 cents to New Orleans. In all other instances where reshipping rates are in effect, they should be revised in harmony with the rates prescribed from St. Louis to Memphis and New Orleans, distance considered.

Local rates from and to the above-mentioned points should be revised in harmony with the reshipping rates constructed on the above basis and local rates from or to other points should be made with relation to the local rates so ascertained, distance considered.

It has been customary to adjust the rates from important producing regions to Mississippi Valley points through a number of the important grain markets, so that the sums of the rates into and out of such markets have in most cases been on a substantial equality. In revising the reshipping and local rates as above provided, the existing equalization through the so-called primary markets should as far as possible be maintained, even though necessary to depart from a distance basis.

Among the suspended schedules are those naming commodity rates from points on the Seaboard Air Line and Atlantic Coast Line in North Carolina, South Carolina, Georgia, Florida, and Alabama to Nashville. In all instances the present rates to Nashville have

not been changed, although the tariffs contain certain restrictions as to routing. No objection has been voiced to these schedules.

As previously stated, from Virginia cities and from New York, and other points in trunk line territory the rates to Nashville have been revised under the suspended schedules to conform to the present rates to Decatur. The distances to Nashville are practically the same as to Decatur, and in the *Nashville Case* we approved class rates from Virginia cities and other eastern points to Nashville which were the same as the rates to Decatur. The present commodity rates to Decatur appear to be reasonable in comparison with the rates on like commodities from the same points of origin to Knoxville and Chattanooga, Tenn., and to Atlanta and Birmingham.

There were also suspended in this proceeding certain water-and-rail rates from eastern port cities to Nashville. It is proposed to cancel the present commodity rates on a number of articles, leaving class rates applicable. It is stated that there is no movement at the present time of those commodities and no prospective movement in any quantity that would justify the continuance of the commodity rates. It is also proposed to increase the present proportional rate on potatoes from Boston, Mass., on traffic originating in Maine, New Hampshire, Vermont, and Canada, and to make it the same as the present rate to Decatur.

We find that the proposed revision of rates to Nashville from Virginia cities, Boston, New York, and other points in trunk line territory, and from points on the Seaboard Air Line and Atlantic Coast Line in North Carolina, South Carolina, Georgia, Florida, and Alabama has been justified.

We further find that as to schedules naming rates to Nashville and intermediate points under which the present rates to Nashville are observed as maxima at intermediate points the proposed revision has been justified.

An appropriate order will be entered requiring the cancellation of the suspended schedules, except as to asphalt from New Orleans and other Gulf ports to branch-line points on the Nashville, Chattanooga & St. Louis east of Nashville, published in supplement No. 4 to the tariff of F. L. Speiden, agent, I. C. C. No. 402, in so far as they have been found not justified, and the filing of new schedules establishing rates in accordance with the bases herein prescribed, and discontinuing this proceeding.

APPENDIX.

Fresh meat.

All points to—	Tonnage during second week, Jan., Apr., July, and Oct., 1920.	Present rate from St. Louis.	Suspended rate from St. Louis.	Increase in rate.	Reduction in rate.	Increase in revenue.	Reduction in revenue.	Increases and reductions in revenues under 80-cent rate, St. Louis to New Orleans.				
								Rate.	Reduction under present rate.	Increase over present rate.	Increase in revenue.	Reduction in revenue.
	Pounds.	Cents.	Cents.	Cents.	Cents.	\$.	Cents.	Cents.	Cents.	Cents.		
Memphis, Tenn.	2,373,628	46.5	69	23.5		\$5,590.72		36		9.5	\$2,260.08	
Helena, Ark.	161,383	80	75		5		\$80.69	61.5	18.5			\$298.56
Clarksdale, Miss.	236,205	102	83		19		486.79	68	34			871.10
Greenwood, Miss.	55,275	104	83		21		116.08	68	36			198.99
Greenville, Miss.	27,317	80	83	3		8.20		68	12			32.78
Jackson, Miss.	134,303	95.5	88		7.5		100.73	72	23.5			315.61
Yazoo City, Miss.	43,200	88.5	88				2.46	72	16.5			81.18
Vicksburg, Miss.	57,370	80	88	8		45.90		72	8			45.90
Natchez, Miss.	56,160	80	93	13		73.00		76.5	3.5			19.66
Baton Rouge, La.	35,977	80	96	16		57.08		80				
New Orleans, La.	2,239,390	80	96	16		3,583.02		80				
Total.						9,357.92	786.75				2,260.08	1,863.78

Paper and paper articles, including newsprint paper.

All points to—	Tonnage during second week, Jan., Apr., July, and Oct., 1920.	Present rate from St. Louis.	Suspended rate from St. Louis. ¹	Increase in rate.	Reduction in rate.	Increase in revenue.	Reduction in revenue.	Increases and reductions in revenues under 42-cent rate, St. Louis to New Orleans.				
								Rate.	Reduction under present rate.	Increase over present rate.	Increase in revenue.	Reduction in revenue.
	<i>Pounds.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>			<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>		
Jackson, Tenn.	66,960	56.5	37	19.5	19.5	\$2,353.32	\$130.57	27	29.5	4	\$570.50	\$197.53
Memphis, Tenn.	1,426,257	25.5	42	16.5	1			29.5				138.30
Jackson, Miss.	86,440	54	53				8.64	38	16			35.48
Vicksburg, Miss.	88,707	42	53	11		97.58		38	4			20.66
Natchez, Miss.	103,334	42	56	14		144.67		40	2			
Baton Rouge, La.	37,915	42	58	16		60.66		42				
New Orleans, La.	21,335,439	42	58	16		2,136.70		42				
Total						4,792.93	139.21				570.50	391.97

¹ On newsprint and wrapping paper.

² Includes 61,000 pounds to Kenner, La., and 33,900 pounds to Hammond, La.

Canned goods.

All points to—	Tonnage during second week, Jan., Apr., July, and Oct., 1920.	Present rate from St. Louis.	Suspended rate from St. Louis.	Increase in rate.	Reduction in rate.	Increase in revenue.	Reduction in revenue.	Increases and reductions in revenues under 56-cent rate, St. Louis to New Orleans.				
								Rate.	Reduction under present rate.	Increase over present rate.	Increase in revenue.	Reduction in revenue.
	<i>Pounds.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>			<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>		
Jackson, Tenn.	77,133	58.5	41	12.5	17.5	\$665.46	\$134.98	36	22.5			\$173.55
Memphis, Tenn.	532,370	33.5	46					39		5.5	\$292.80	59.22
Helena, Ark.	84,600	50	50					43				33.39
Greenville, Miss.	133,555	50	55	5		66.77		47.5	2.5			105.84
A. & M. College, Miss.	50,400	68.5	55		13.5		68.04	47.5	21			126.97
Jackson, Miss.	50,790	75.5	59		16.5		83.80	50.5	25			149.27
Meridian, Miss.	59,710	75.5	59				98.52	50.5	25			
Vicksburg, Miss.	60,000	50	59	9		54.00		50.5		.5	3.00	
Natchez, Miss.	64,460	50	62	12		77.35		53.5		3.5	22.56	
Baton Rouge, La.	85,020	50	64	14		119.03		56		6	51.01	
New Orleans, La.	624,747	50	64	14		\$74.65		56		6	\$74.85	
Bayou La Batre, Ala.	36,900	50	64	14		51.66		56		6	22.14	
Mobile, Ala.	123,845	50	64	14		173.38		56		6	74.31	
Total						2,082.30	385.34				840.67	648.24

Glucose.

All points to—	Tonnage during second week, Jan., Apr., July, and Oct., 1920.	Present rate from St. Louis.	Suspended rate from St. Louis.	Increase in rate.	Reduction in rate.	Increase in revenue.	Reduction in revenue.	Increases and reductions in revenues under 35-cent rate, St. Louis to New Orleans.				
								Rate.	Reduction under present rate.	Increase over present rate.	Increase in revenue.	Reduction in revenue.
	Pounds.	Cents.	Cents.	Cents.	Cents.			Cents.	Cents.	Cents.		
Covington, Tenn.	42,675	36.5	35	10.5	1.5		\$6.40	24.5	12			\$51.21
Memphis, Tenn.	1,286,824	25.5	36	10.5		\$1,330.16		24.5	1			126.68
Greenville, Miss.	65,025	32	43	11		71.53		30	2			13.00
West Point, Miss.	61,600	56.5	43		13.5		83.16	30	26.5			163.24
Jackson, Miss.	129,940	40	46	6		77.93		31.5	8.5			110.45
Vicksburg, Miss.	53,213	32	46	14		74.50		31.5	.5			2.66
Natchez, Miss.	47,732	32	48	16		76.37		33.5				
Baton Rouge, La.	68,060	32	50	18		122.51		35		1.5	\$7.16	
New Orleans, La.	1,927,724	32	50	18		3,469.90		35		3	578.32	
Total						5,222.93	89.56				605.90	467.24

Bags and bagging.

All points to—	Tonnage during second week, Jan., Apr., July, and Oct., 1920.	Present rate from St. Louis.	Suspended rate from St. Louis.	Increase in rate.	Reduction in rate.	Increase in revenue.	Reduction in revenue.	Increases and reductions in revenues under 32-cent rate, St. Louis to New Orleans.				
								Rate.	Reduction under present rate.	Increase over present rate.	Increase in revenue.	Reduction in revenue.
	Pounds.	Cents.	Cents.	Cents.	Cents.			Cents.	Cents.	Cents.		
Jackson, Tenn.	40,600	40	30	10	10		\$40.60	20.5	19.5			\$79.17
Dyersburg, Tenn.	30,000	40	23	12	12		36.00	20.5	19.5			58.50
Memphis, Tenn.	1,975,385	18.5	33	14.5		\$2,864.31		22.5		4	\$730.15	
Helena, Ark.	67,500	28.5	36	7.5		50.62		24.5				27.00
Greenville, Miss.	31,600	28.5	40	11.5		36.34		27	1.5			4.74
Shaw, Miss.	62,500	52	40	12	12		75.00	27	25			156.25
Minter City, Miss.	51,655	53.5	40	13.5	13.5		69.74	27	26.5			136.89
Rome, Miss.	33,000	52	40	12	12		39.60	27	25			82.50
Blaine, Miss.	29,000	53.5	40	13.5	13.5		39.15	27	26.5			76.85
Yazoo City, Miss.	30,750	36.5	42	5.5		16.91		29	7.5			23.06
Canton, Miss.	31,000	43.5	42	1.5	1.5	87.10	4.65	29	14.5	.5	3.23	44.95
Vicksburg, Miss.	64,518	28.5	42	13.5			5.55	29				53.65
Meridian, Miss.	37,000	43.5	42	1.5	1.5	108.11		30.5		2	13.95	
Natchez, Miss.	69,750	28.5	44	15.5		58.45		32		3.5	11.09	
Gramercy, La.	33,400	28.5	46	17.5		1,074.92		32		3.5	214.98	
New Orleans, La.	614,238	28.5	46	17.5	3.5	215.08		32		3.5	43.02	
Mobile, Ala.	122,900	28.5	46	17.5				32				
Total						4,511.84	310.29				1,077.02	743.56

No. 4844.

EXPORT BILL OF LADING.
IN THE MATTER OF BILLS OF LADING.

Submitted February 10, 1921. Decided October 21, 1921.

Rules and regulations made prescribing form of through export bill of lading to be issued by carriers subject to the interstate commerce act for application to the transportation of property, in connection with ocean carriers, whose vessels are registered under the laws of the United States, from points in the United States designated under the provisions of section 25 of the interstate commerce act to points in nonadjacent foreign countries.

Walter Berry, U. J. Gendron, and J. H. Felton for United States Shipping Board.

Bruce Scott, B. W. Scandrett, H. A. Scandrett, J. L. Coleman, and Fred H. Wood, committee of counsel representing western classification lines; *Theodore W. Reath, Clyde Brown by Parker McColleston, Henry Wolf Bicklé, F. A. Farnham, H. A. Taylor, and R. N. Collyer* for carriers in official classification territory; *R. V. Fletcher and C. B. Northrup* for southern carriers; *O. W. Dynes* for Chicago, Milwaukee & St. Paul Railway Company; *R. C. Fyfe* for western lines; *Roscoe H. Hupper, Charles R. Hickox, and J. McAuliffe, jr.*, for International Mercantile Marine Company (American line), Munson Steamship line, Elwell lines, Independent Steamship Company, Norton-Lilly Company (Isthmian line to Mediterranean, and as Norton line to South America); *H. S. Noble* for Great Lakes Transit Corporation; *A. R. Lawton, jr.*, and *C. B. Northrop* for bill of lading committee, southeastern lines; *Russell H. Loines* for American Steamship Owners' Mutual Protection and Indemnity Association, Incorporated; *Grosscup & Morrow by W. A. Johnson* for Pacific Steamship Company; *J. A. Banning, A. McFarland, H. G. Rarlton, and J. G. Stubbs* for Pacific-American Steamship Association; *E. W. Camp* for Atchison, Topeka & Santa Fe Railway Company; *R. B. Rhett and R. V. Fletcher* for Illinois Central Railroad Company and Yazoo & Mississippi Valley Railway Company.

Luther M. Walter, John S. Burchmore, F. H. Price, C. J. Austin, J. A. Middleton, J. H. Beek, and Frank T. Bentley for National Industrial Traffic League; *Luther M. Walter, John S. Burchmore, A. W. McLaren, and E. D. Speer* for Morris & Company; *Borders, Walter, Burchmore & Collin by Luther M. Walter and John S. Burchmore, F. H. Price, and A. P. Husband* for Millers National Federa-

tion; *R. R. Hargis* for Wilson & Company; *C. B. Heinemann*, *C. E. Herrick*, *S. T. Nash*, and *Arthur B. Hayes* for Institute of American Meat Packers; *W. W. Manker* for Armour & Company; *C. O. Cornwell* for Cudahy Packing Company; *A. C. Owen*, *J. O. Kobzina*, and *R. D. Rynder* for Swift & Company; *Ralph Merriam* and *C. G. Hylander* for National Association of Chewing Gum Manufacturers and William Wrigley, Jr., Company; *R. M. Dunn* for Indian Packing Corporation; *Charles J. Austin* for New York Produce Exchange; *Mrs. J. G. Hammond* for Chamber of Commerce of Cleveland; *Joseph H. Donnell* for Stein-Hall Manufacturing Company; *W. R. Arthur* for Elgin Motor Car Corporation; *R. J. Curtis*, *J. E. Wyatt*, and *A. F. Runyan* for Anderson & Gustafson; *John S. Willis* for Board of Marine Underwriters, Los Angeles Chamber of Commerce, Rice Association of California, Foreign Commerce Association of Pacific Coast, Cannery League of California, and Dried Fruit Association of California; *R. C. Fulbright* for Dallas Cotton Exchange, Galveston Cotton Exchange, Houston Cotton Exchange, Savannah Cotton Exchange, Texas Cotton Association, New Orleans Cotton Exchange, and New York Cotton Exchange; *C. P. Bye* for New York Cotton Exchange; *Seth Mann* for San Francisco Chamber of Commerce; *Arthur Dunn* for Foreign Commerce Association of the Pacific Coast; *H. W. Helferich* for California Associated Raisin Company; *W. D. Wall* for Traffic Bureau of San Jose Chamber of Commerce; *Frank M. Hill* for Fresno Traffic Association; *Thomas B. Paton* for American Bankers' Association; *J. V. Norman* and *J. H. Townshend* for Southern Hardwood Traffic Association; *Harvey M. Dickson* for National Lumber Exporters' Association; and *Ralph Merriam* for Traffic Bureau of the Central Manufacturing District and Old Ben Coal Corporation.

REPORT OF THE COMMISSION ON FURTHER HEARING.

HALL, *Commissioner*:

This is an investigation instituted on our own motion into the practices of carriers with respect to the form and substance of bills of lading, and the issuance, transfer, and surrender thereof. For a statement of the situation up to December 7, 1918, reference may be had to our report of April 14, 1919, in *Bills of Lading*, 52 I. C. C., 671, hereinafter termed the former report.

We there prescribed a uniform domestic bill of lading and a uniform export bill of lading. Upon petition of interested parties our order of April 14, 1919, was enjoined by the district court of the United States for the southern district of New York, three judges sitting as in the statute provided. 38 Stat. 219. The majority held that we had no authority to prescribe bills of lading for either domestic or export traffic. *Alaska S. S. Co. v. United States*, 259 Fed., 713.

The majority in their opinion stated that unquestionably the Congress has power to declare what terms carriers subject to the act to regulate commerce may insert in their bills of lading, and that, for the purposes of the case, it may be assumed that this legislative power can be delegated to the Commission; but that no power was conferred upon us "to draw the carriers' bills of lading, either in whole or in part. If they are in any respect unjust or unreasonable or unlawful, the courts are open to the parties injured; if they contain any limitation of liability for loss or damage which Congress has declared to be void, the courts will say so."

An appeal was taken to the Supreme Court, which held that the passage of the transportation act, 1920, made the case a moot case, and reversed the order of the district court, remanding the case to that court with directions to dismiss the petition without prejudice to the right of the complainants to assail in the future any order the Commission might make prescribing bills of lading after the enactment of the new legislation. *United States v. Alaska S. S. Co.*, 253 U. S., 113.

The interstate commerce act had been amended on February 28, 1920, by the transportation act, 1920. These amendments included the addition of a new section 25, which is set forth in the margin.¹ Paragraph (4) thereof provides, in part:

The Commission shall, in such manner as will preserve for the carrier by water the protection of limited liability provided by law, make such rules and regulations not

¹ SEC. 25. (1) That every common carrier by water in foreign commerce, whose vessels are registered under the laws of the United States, shall file with the Commission, within thirty days after this section becomes effective and regularly thereafter as changes are made, a schedule or schedules showing for each of its steam vessels intended to load general cargo at ports in the United States for foreign destinations (a) the ports of loading, (b) the dates upon which such vessels will commence to receive freight and dates of sailing, (c) the route and itinerary such vessels will follow and the ports of call for which cargo will be carried.

(2) Upon application of any shipper a carrier by railroad shall make request for, and the carrier by water shall upon receipt of such request name, a specific rate applying for such sailing, and upon such commodity as shall be embraced in the inquiry, and shall name in connection with such rate, port charges, if any, which accrue in addition to the vessel's rates and are not otherwise published by the railway as in addition to or absorbed in the railway rate. Vessel rates, if conditioned upon quantity of shipment, must be so stated and separate rates may be provided for carload and less than carload shipments. The carrier by water upon advices from a carrier by railroad, stating that the quoted rate is firmly accepted as applying upon a specifically named quantity of any commodity, shall, subject to such conditions as the Commission by regulation may prescribe, make firm reservation from unsold space in such steam vessel as shall be required for its transportation and shall so advise the carrier by railroad, in which advices shall be included the latest available information as to prospective sailing date of such vessel.

(3) As the matters so required to be stated in such schedule or schedules are changed or modified from time to time, the carrier shall file with the Commission such changes or modifications as early as practicable after such modification is ascertained. The Commission is authorized to make and publish regulations not inconsistent herewith governing the manner and form in which such carriers are to comply with the foregoing provisions. The Commission shall cause to be published in compact form, for the information of shippers of commodities throughout the country, the substance of such schedules, and furnish such publications to all railway carriers subject to this Act, in such quantities that railway carriers may supply to each of their agents who receive commodities for shipment in such cities and towns as may be specified by the Commission, a copy of said publication; the intent being that each shipping community sufficiently important, from the standpoint of the export trade, to be so specified by the Commission shall have opportunity to know the sailings and routes, and to ascertain the transportation charges of such vessels

inconsistent herewith as will prescribe the form of such through bill of lading. In all such cases it shall be the duty of the carrier by railroad to deliver such shipments to the vessel as a part of its undertaking as a common carrier.

On June 15, 1920, the following notice was sent to respondent carriers by railroad and by water:

On April 5, 1920, the Commission issued a circular letter in transmitting Foreign Commerce Order No. 1, in which the following notice was given:

"Railway carriers and such water carriers [carriers by water in foreign commerce, whose vessels are registered under the laws of the United States] should arrange for conferences at the earliest practicable date with a view to immediately complying with the provisions of paragraph (4) of Section 25 which imposes upon the railway carrier the duty of issuing a through bill of lading to the foreign point of destination and after an agreement as to this uniform bill of lading has been reached by such carriers, it should be presented to the Commission for its approval. Representatives of shippers should be freely consulted and the Commission should be advised from time to time as to the progress which is being made."

It is now requested that the carriers by railroad submit on or before August 1, 1920, tentative forms of through export bills of lading which they may desire to issue in connection with carriers by water whose vessels are registered under the laws of the United States, and in connection with carriers by water whose vessels are of foreign registry.

It is further requested that 500 copies of these forms of through export bills of lading be furnished the Commission for distribution to export shippers, and other parties interested, in order that they may have the opportunity to file any objections or suggestions they may desire to make with respect to the form and substance thereof, it being the intent and purpose of the Commission thereafter to hold hearings and conferences with a view to reconciling as far as possible such differences as may be developed, and to define the issues with respect to such differences as cannot be reconciled.

On August 7, 1920, we entered an order reopening the proceeding for further hearings with respect to the form and substance of through export bills of lading and issued a notice stating that separate forms of through export bills of lading had been submitted by the southern, eastern, and western carriers, respectively. Those of the eastern and southern carriers differ from each other only in minor

engaged in foreign commerce. Each railway carrier to which such publication is furnished by the Commission is hereby required to distribute the same as aforesaid and to maintain such publication as it is issued from time to time, in the hands of its agents. The Commission is authorized to make such rules and regulations not inconsistent herewith respecting the distribution and maintenance of such publications in the several communities so specified as will further the intent of this section.

(4) When any consignor delivers a shipment of property to any of the places so specified by the Commission, to be delivered by a railway carrier to one of the vessels upon which space has been reserved at a specified rate previously ascertained, as provided herein, for the transportation by water from and for a port named in the aforesaid schedule, the railway carrier shall issue a through bill of lading to the point of destination. Such bill of lading shall name separately the charge to be paid for the railway transportation, water transportation, and port charges, if any, not included in the rail or water transportation charge; but the carrier by railroad shall not be liable to the consignor, consignee, or other person interested in the shipment after its delivery to the vessel. The Commission shall, in such manner as will preserve for the carrier by water the protection of limited liability provided by law, make such rules and regulations not inconsistent herewith as will prescribe the form of such through bill of lading. In all such cases it shall be the duty of the carrier by railroad to deliver such shipment to the vessel as a part of its undertaking as a common carrier.

(5) The issuance of a through bill of lading covering shipments provided for herein shall not be held to constitute "an arrangement for continuous carriage or shipment" within the meaning of this Act.

details. That of the western carriers is a modification of the export bill prescribed by us in our former report, and differs considerably from those of the other carriers. Only the eastern carriers file with us, as part of their tariff publications, a form of through export bill of lading.

Pursuant to the order and notice we have held further hearings, received briefs, and heard oral argument. In this report we deal only with the through export bill of lading for shipments to non-adjacent foreign countries to be issued by carriers subject to the interstate commerce act in connection with ocean carriers whose vessels are registered under the laws of the United States.

There is conflict of view among the parties as to our jurisdiction. The question is one of law, but pending judicial interpretation of the pertinent provisions of the act we must construe them in endeavoring to perform the administrative duties which they impose upon us.

The inland carriers, and more particularly the eastern carriers, challenge our power to do more than prescribe the "form" as distinguished from the substance of the bill of lading. The eastern carriers say:

Illustrations of form would be a rule requiring different colored paper to distinguish order from straight bills; requiring the paper to be of a prescribed size; instructions as to size of type; printing conditions on face; that the inland conditions and the ocean conditions shall be printed separately, etc.

Counsel for American ocean carriers operating in foreign commerce on the Atlantic Ocean make clear their belief that we have no power to prescribe any condition applicable to them without their consent.

Upon our invitation a representative of the United States Shipping Board was present at the hearings. He does not think "that the Interstate Commerce Commission has jurisdiction over water carriers," and on behalf of the Shipping Board desired "to save any proper objections and exceptions to the jurisdiction of the Commission, and exceptions to the evidence;" adding: "I do this in order to preserve our rights in case it should become valuable hereafter."

We discussed the question of jurisdiction on pages 685 and 686 of our former report. After referring to sections 1, 12, and 15 of the act to regulate commerce, we said:

Thus the Commission has power and authority under the act to determine the reasonableness of rules, regulations, and practices of the carriers, and to require them to cease and desist from the enforcement of rules and regulations, and the continuance of practices found to be unreasonable or unjustly discriminatory, or unduly prejudicial. And herein lies the Commission's power to lay hands upon the "issuance, form, and substance" of bills of lading. The act specifically requires carriers subject thereto to issue bills of lading. The Commission has undoubted authority to enforce this requirement in a proper proceeding. It can require carriers to file with it the rules and regulations which they write into their bills of lading. It can, by due

process, require that uniform rules and regulations be adopted by carriers subject to its jurisdiction. It can determine whether such are, in and of themselves, or as interpreted in the practices of the carriers, reasonable and nondiscriminatory, and, if otherwise, condemn them and prescribe reasonable rules and regulations, in which event the carriers must obey.

It is manifest, also, that the conditions of the bill of lading regarding the liability of the carriers affect "the value of the service rendered to the * * *, shipper, or consignee" within the meaning of section 6 of the interstate commerce act.

We think that the argument of the eastern carriers emphasizes the word "form" in the expression "make such rules and regulations not inconsistent herewith as will prescribe the form of such through bill of lading" at the expense of the other words, such as, for example, "not inconsistent herewith," and to the entire exclusion of the various provisions in the act to which we have referred. These deal with substance, and inconsistency therewith could hardly arise in matters unsubstantial. Their interpretation would imply that each carrier could insert its own peculiar phraseology in its bill of lading, while the intention of Congress to have a uniform bill of lading, prescribed by us under the circumstances there described, is clearly indicated in section 25. It would be difficult, if not impossible, to prevent the unjust discrimination and undue prejudice forbidden by the interstate commerce act if the carriers subject to that act could vary the terms of the contract of transportation at will in dealing with different shippers of the same commodity. That the eastern carriers themselves, in a similar connection, attach a much broader significance to the word "form" than they here admit is shown in section 18, part II, of their proposed export bill of lading, reading, "The property covered by this bill of lading is subject to all conditions expressed in the regular form of bill of lading in use by the Steamship Company * * *." We are required by section 25 of the act to "preserve for the carrier by water the protection of limited liability provided by law," and this can not be done by specifying color of paper or size of type.

We are of opinion that our power to prescribe rules and regulations, not inconsistent with the act, which shall constitute and determine the form of the bill of lading, covers the terms or tenor of that instrument and is, as to the transportation until delivery to the ocean carrier, adequate and complete. And the intent of the Congress to require a uniform through export bill of lading and to have the terms thereof prescribed by us seems clear.

In our former report we discussed the export bill of lading on page 690 and on pages 726 to 739, inclusive. The terms and conditions of part I were considered in detail. In addition to the forms

of through export bills of lading proposed by the rail carriers prior to the recent hearings, numerous other forms or provisions were submitted by interested parties, both before and at the hearings. The discussion centered principally upon the forms proposed by the National Industrial Traffic League, hereinafter referred to as the league, and by the eastern carriers. We reproduce in Appendix A the form prescribed by us in the former report, and in B and C those suggested by the league and by the eastern carriers, respectively.

In each of the three the conditions are grouped under three heads, or parts, designated I, II, and III, respectively, and having to do with service (1) until delivery at the port in the United States, (2) after such delivery and until delivery at the foreign port, and (3) after delivery at the foreign port and until delivery at ultimate destination if destined beyond that port. The following shows the number of conditions in their respective forms under each of these three general heads or parts:

Parts.....	I	II	III
Commission form.....	11	19	2
League form.....	10	15	3
Eastern carriers' form.....	12	19	2

The points of difference between the proponents of the three forms of bills are many, as are the variations in the wording of provisions even where the parties are in substantial accord as to the thought to be expressed. In general, the shippers seek the benefit of full common-carrier liability from the time a shipment is delivered to the initial rail carrier for transportation until it is delivered to the consignee or his order at destination. The carriers wish to restrict their liability to the lowest degree consistent with the law.

In view of the confusion which appears to exist it is appropriate to point out the difference between our functions and those of the courts respecting bills of lading. There are innumerable provisions which, if agreed to by the parties and incorporated in a bill of lading, might be sustained by the courts as reasonable, and the variations of language in which such provisions might be expressed are almost infinite. The courts determine the validity of such provisions just as they do in the case of other contracts, and do not consider whether or not particular provisions, not contrary to the law, should be included or omitted. We, on the other hand, must deal with the terms of the bill of lading as rules and regulations which affect the value of the service rendered to the shipper in the same way as it is affected by rules and regulations published in the carriers' tariffs.

Viewed as an administrative matter, the question of what rules and regulations are reasonable, or will be reasonable for the future, in connection with the transportation covered by the bill of lading,

depends principally upon the adjustment of the carrier's compensation to the degree of risk which it incurs. That degree of risk is reflected in operating expenses. The greater the risk, the greater is the value to the shipper of the service rendered, which should be rewarded correspondingly. A lesser compensation is appropriate in cases where the carrier is to a large extent relieved from the full liability of common carriers. In other words, the question before us is not merely whether certain provisions would or would not be valid if incorporated in a contract between the parties, but is rather: What should be the terms of the contract of carriage, the charges for which we are authorized and required to regulate? It must be borne in mind that section 15a of the interstate commerce act imposes upon us the duty of initiating rates which shall yield to the carriers subject thereto as a whole, or as a whole in designated rate groups, as nearly as may be a fair return upon the aggregate value of their railway property held for and used in the service of transportation.

We have given consideration to the suggestions and recommendations submitted to us, and to the reasons urged for and against their adoption. To present and discuss them in detail would serve no useful purpose and unduly lengthen this report. They are sufficiently shown in Appendixes A, B, and C, and in the form of uniform through export bill of lading set forth in Appendix D and hereinafter prescribed by us.

One contention of the shippers permeates the league form and is stated as follows in the brief:

It is believed that under the statute the railway carriers and the water carriers jointly undertake as carriers to transport freight from an inland point in the United States to a foreign port. The duty of the carrier by railroad is to deliver the shipment to the vessel as a part of its undertaking as a common carrier. There is no cessation in this carrier duty from the time the inland carrier at place of origin accepts the shipment until the carrier by water delivers the same at the contracted port of destination.

We discussed this contention in our former report at pages 727 to 729. We there reached the conclusion that the Cummins amendment does not apply to transportation from a point in the United States to a point in a nonadjacent foreign country, and to that conclusion we adhere.

The shippers also urge that provision should be made specifically at a number of places in the bill of lading for notice to the shipper or consignee, or both, of changes which would otherwise be unknown to them, such as change in vessel. We understand that the rail carriers do not object to the giving of such notice, but that the ocean carriers do object on the score of clerical labor in the case of shipments transported in a vessel other than that for which they were intended.

On one point there was substantial unanimity, namely, that the bill of lading should be of a width convenient for use in an ordinary typewriter. The number of copies which must be made in a set of export bills of lading is so large that thin paper is desirable, and for this reason we are prescribing a form which has all of the printed matter on the face of the sheet. This sheet may be lengthened, if desired, so as to provide more space for describing or listing the articles shipped, and no requirements are made as to size of type or color of paper.

The parties agreed to the use of certain terms where appropriate, such as "vessel", "ocean carrier", and the like, in the interest of uniformity.

The limitations upon our jurisdiction over the ocean carriers dispose of the suggestions and recommendations respecting parts II and III of the conditions. All parties emphasized the importance of securing a bill of lading that would be placed in general use at once.

Upon the record we are of opinion and find that the general provisions, and the rules and regulations relating to the service until delivery at the port of export, contained in the through export bills of lading used by the carriers respondent, in connection with ocean carriers whose vessels are registered under the laws of the United States, for the transportation of property from points within the United States, designated by us under the provisions of section 25 of the interstate commerce act, to points in nonadjacent foreign countries, will be unreasonable for the future in so far as they differ from the rules and regulations hereby made by us prescribing the form of uniform through export bill of lading set forth in Appendix D, which we find will be reasonable for the future.

For the purposes of this proceeding we approve the rules and regulations constituting parts II and III of the conditions in Appendix C as modified in Appendix D.

We are further of opinion and find that the carriers respondent herein should publish and file, in the manner prescribed in section 6 of the interstate commerce act, and thereafter observe and apply to the transportation of property by them, in connection with ocean carriers whose vessels are registered under the laws of the United States, from points within the United States designated by us under the provisions of section 25 of the interstate commerce act to points in nonadjacent foreign countries, the rules and regulations made by us prescribing the form of uniform through export bill of lading set forth in Appendix D.

The form of bill of lading in Appendix D is the straight bill of lading. Appropriate changes in the portion preceding "Contract Terms and Conditions" should be made for the order bill of lading.

In our report in *Domestic Bill of Lading and Live Stock Contract*, 64 I. C. C., 357, we are making rules and regulations prescribing the form of so-called domestic bills of lading, which is used for the transportation of shipments to adjacent foreign countries, including transportation in connection with common carriers by water in foreign commerce whose vessels are registered under the laws of the United States.

An appropriate order will be entered.

64 I. C. C.

UNIVERSITY OF ILLINOIS LIBRARY

NOV 14 1922

Bill of Lading No.

Contract No.

...Company

In consideration of the rate of freight herein named, it is hereby mutually agreed by each carrier, severally but not jointly, that the service to be performed by it hereunder shall be subject to the conditions not prohibited by law, whether printed or written, herein contained, which are hereby agreed to by the shipper and by him accepted for himself and his assigns.

The inland proportion of the rate to the port (A) of _____ is _____ cents per one hundred pounds.

[illegible]

NOTE.—Where the rate is dependent on value, shippers are required to state specifically in writing the value of the property.

The actual value of the property is hereby specifically stated by the shipper to be not exceeding
per

* weight (subject to correction)

*United States law requires agent issuing bill of lading to write either "shipper's" or "carrier's" before "weight."

ATTENTION IS CALLED TO THE FACT THAT the ocean rate is based on a standard bale of compressed cotton from a gin box not exceeding twenty-seven (27) inches by fifty-four (54) inches, compressed to a density of at least twenty-two and one-half (22½) pounds per cubic foot. Any bale from a gin box exceeding these dimensions will be assessed an extra ocean freight charge per bale. All bales that are, when delivered to the ship, of not greater width than thirty (30) inches or greater length than sixty (60) inches will be accepted as baled in a gin box not exceeding twenty-seven (27) inches by fifty-four (54) inches.

NOTE.—It is understood that where port (A) is not the receiving port of the foreign exporting steamship company, and any other port in the United States is named as port (A), the property will be transported subject to Condition Number Eleven (11) under Heading One (I), which follows.

CONDITIONS.

Any alteration, addition, or erasure herein which shall be made without an indorsement hereon signed by the agent of the carrier issuing this bill of lading shall be without effect, and this bill of lading shall be enforceable according to its original tenor.

This bill of lading is not to be used on traffic from a point in the United States destined to a point in an adjacent foreign country.

I.

With respect to the service until delivery at the port (A) first mentioned above, it is agreed that:

1. The carrier or party in possession of any of the property herein described shall be liable for any loss thereof or damage thereto except as hereinafter provided. No carrier or party in possession of any of the property herein described shall be liable for any loss thereof or damage thereto, or delay caused by the act of God, the public enemy, the authority of law, or the act or default of the shipper or owner, or for natural shrinkage. The carrier's liability shall be that of warehouseman, only, for loss, damage, or delay caused by fire occurring after the expiration of the free time allowed by tariffs lawfully on file (such free time to be computed as therein provided) after notice of the arrival of the property at destination or at the port of export (if intended for export) has been duly sent or given, and after placement of the property for delivery at the port of export, or tender of delivery of the property to the party entitled to receive it has been made. Except in case of negligence of the carrier or party in possession (and the burden to prove freedom from such negligence shall be on the carrier or party in possession), the carrier or party in possession shall not be liable for loss, damage, or delay occurring while the property is stopped and held in transit upon the request of the shipper, owner, or party entitled to make such request, or resulting from a defect or vice in the property, or from riots or strikes, or for country damage to cotton.

In case of quarantine the property may be discharged at risk and expense of owners into quarantine depot or elsewhere, as required by quarantine regulations, or authorities, or for the carrier's dispatch, at nearest available point in carrier's judgment, and in any such case carrier's responsibility shall cease when the property is so discharged, or the property may be returned by carrier at owner's expense to shipping point, earning freight both ways. Quarantine expenses of whatever nature or kind upon or in respect to the property shall be borne by the owners of the property or be a lien thereon. The carrier shall not be liable for loss or damage occasioned by fumigation or disinfection or other acts required or done by quarantine regulations or authorities, nor for detention, loss or damage of any kind occasioned by quarantine or the enforcement thereof. No carrier shall be liable except in case of negligence for any mistake or inaccuracy in any information furnished by the carrier, its agents, or officers, as to quarantine laws or regulations. The shipper shall hold the carriers harmless from any expense they may incur, or damages they may be required to pay, by reason of the introduction of the property covered by this contract into any place against the quarantine laws or regulations in effect at such place.

2. In issuing this bill of lading this company agrees to transport only over its own line and acts only as agent with respect to the portion of the route beyond its own line.

No carrier shall be liable for loss, damage, or injury not occurring on its own road or its own water line or its portion of the through route, nor after said property has been delivered to the next carrier.

3. No carrier is bound to transport said property by any particular train or vessel, or in time for any particular market or otherwise than with reasonable dispatch. Every carrier shall have the right in case of physical necessity to forward said property by any railroad or route between the point of shipment and the point of destination; but if such diversion shall be from a rail to a water route, the liability of the carrier shall be the same as though the entire carriage were by rail.

The amount of any loss, damage, including loss or damage arising from delay for which any carrier is liable shall be computed on the basis of the value of the property (being the bona fide invoice price, if any, to the consignee, including the freight charges, if paid) at the place and time of shipment under this bill of lading, unless a lower value has been represented in writing by the shipper or has been agreed upon or is determined by the classification or tariffs upon which the rate is based, in any of which events such lower value shall be the maximum amount to govern such computation, whether or not such loss or damage occurs from negligence.

Claims for loss, damage, or delay must be made in writing to the carrier at the port of export or to the carrier issuing this bill of lading within nine months after delivery of the property at said port (A), or, in case of failure to make such delivery, then within nine months after a reasonable time for such delivery has elapsed; and claims so made against said delivering or issuing carrier shall be deemed to have been made against any carrier which may be liable hereunder. Unless claims are so made the carrier shall not be liable.

Any carrier or party liable on account of loss or damage to any of said property shall have the full benefit of any insurance that may have been effected upon or on account of said property, so far as this shall not avoid the policies or contracts of insurance. *Provided*, That the carrier reimburse the claimant for the premium paid thereon.

4. Except where such service is required as the result of carrier's negligence, all property shall be subject to necessary coooperation and baling at owner's cost. Each carrier over whose route cotton or cotton linters is to be transported hereunder shall have the privilege, at its own cost and risk, of compressing the same for greater convenience in handling or forwarding, and shall not be held responsible for deviation or unavoidable delays in procuring such compression.

5. Property not removed by the exporting carrier, or the party entitled to receive it, within the free time allowed by tariffs lawfully on file (such free time to be computed as therein provided), after notice of the arrival of the property at port (A) has been duly sent or given, and after placement of the property for delivery at port (A), or tender of the property for delivery upon order of the party entitled to receive it has been made, may be kept in vessel, car, depot, or place of delivery of the carrier or warehouse, subject to the tariff charge for storage and to the carrier's responsibility as warehouseman, only, or may be, at the option of the carrier, removed to and stored in a public or licensed warehouse at port (A), or other available place, at the cost of the owner, and there held without liability on the part of the carrier, and subject to a lien for all freight and other lawful charges, including a reasonable charge for storage.

Property destined to or taken from a station, wharf, or landing at which there is no regularly appointed freight agent, shall be entirely at risk of owner after unloaded from cars or vessels or until loaded into cars or vessels.

6. No carrier will carry or be liable in any way for any documents, specie, or for any articles of extraordinary value not specifically rated in the published classifications or tariffs unless a special agreement to do so and a stipulated value of the articles are indorsed hereon.

7. Every party, whether principal or agent, shipping explosives or dangerous goods, without previous full written disclosure to the carrier of their nature, shall be liable for and indemnify the carrier against all loss or damage caused by such goods, and such goods may be warehoused at owner's risk and expense or destroyed without compensation.

8. The owner or consignee shall pay the freight, and average, if any, and all other lawful charges accruing on said property, and, if required, shall pay the same before delivery. If, upon inspection, it is ascertained that the articles shipped are not those described in this bill of lading, the freight charges must be paid upon the articles actually shipped.

9. Except in case of diversion from rail to water route, as provided for in section 3 hereof, if all or any part of said property is carried by water over any part of said route, such water carriage shall be performed subject to the liabilities, limitations, and exemptions provided by statute and to the conditions contained in this bill of lading not inconsistent therewith or with this section.

No such carrier by water shall be liable for any loss or damage resulting from any fire happening to or on board the vessel, or from explosion, bursting of boilers or breakage of shafts, unless caused by the design or neglect of such carrier.

If the owner shall have exercised due diligence in making the vessel in all respects seaworthy and properly manned, equipped, and supplied, no such carrier shall be liable for any loss or damage resulting from the perils of the lakes, seas, or other waters, or from latent defects in hull, machinery, or appurtenances, whether existing prior to, at the time of, or after sailing, or from collision, stranding, or other accidents of navigation, or from prolongation of the voyage. And, when for any reason it is necessary, any vessel carrying any or all of the property herein described shall have the liberty to call at any port or ports, to tow and be towed, to transfer, transship, or lighten, to load and discharge goods at any time, and assist vessels in distress, to deviate for the purpose of saving life or property, and for docking and repairs. Except in case of negligence, such carrier shall not be responsible for any loss or damage to property if it be necessary or is usual to carry the same upon deck.

If the shipowner shall have complied with the provisions of section 3 of the Harter Act, it is hereby agreed that the owners or consignees of the cargo shall contribute with the shipowner in general average, and shall pay any salvage or special charges properly incurred, even though the necessity for the sacrifice or expenditure was brought about by fault in navigation or management of the ship.

If the property is being carried under a tariff which provides that any carrier or carriers party thereto shall be liable for loss from perils of the sea, then as to such carrier or carriers the provisions of this section shall be modified in accordance with the tariff provisions, which shall be regarded as incorporated into the conditions of this bill of lading.

The term "water carriage" in this section shall not be construed as including lighterage in or across rivers, harbors, or lakes, when performed by or on behalf of rail carriers.

10. No carrier shall be liable for delay not occurring on its own line, or the result of its negligence, nor in any respect other than as warehouseman, while the property awaits further conveyance after proper tender of delivery to the next connecting carrier has been made, and in case the whole or any part of the property specified herein be prevented by any cause from going from the port of export in the first vessel of the ocean line for which intended leaving after arrival of such property at the said port, the carrier hereunder then in possession is at liberty to forward said property by succeeding vessel of said line, or, if deemed necessary, by any other vessel.

This contract is executed and accomplished, and all liability hereunder terminates upon the delivery of the said property to the exporting steamer, her master, agents, or servants, or to the exporting steamship company, or subject to existing delivery arrangements, if any, on the pier usually used by the exporting steamer at the port of export, whether or not the same may be the property of or used as a warehouse by the inland carrier also, and the inland freight and all other charges hereinbefore provided for shall be a first lien on the property, and shall be due and payable by the steamship company or vessel.

11. When the property is transported from port (A) to the receiving port of the foreign exporting vessel, and thence transshipped to port (B), all of the terms and provisions of the foregoing conditions shall apply from port (A) until the delivery at the receiving port of the foreign exporting vessel; but the transportation between port (A) and the port of transshipment is a part of the export movement.

II.

With respect to the service after delivery at the receiving port of the foreign exporting steamship company, and until delivery at the foreign port (B) above mentioned, it is agreed that:

1. The steamer shall have liberty to sail with or without pilots; that the carrier shall have liberty to convey goods in craft and lighters to and from the steamer at the risk of the owners of the goods; and, in case the steamer shall put into a port of refuge, or be prevented from proceeding in the ordinary course of her voyage, to transship the goods to their destination by any other steamer; that the carrier shall not be liable for loss or damage occasioned by fire from any cause or where-soever occurring; by barratry of the master or crew; by enemies, pirates, or robbers; by arrest or restraint of princes, rulers, or people, riots, strikes, or stoppage of labor; by explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, machinery, or appurtenances, or unseaworthiness of the steamer, whether existing at time of shipment, or at the beginning of the voyage, provided the owners have exercised due diligence to make the steamer seaworthy; by heating, frost, decay, putrefaction, rust, sweat, change of character, drainage, leakage, breakage, vermin, or by explosion of any of the goods, whether shipped with or without disclosure of their nature or any loss or damage arising from the nature of the goods or the insufficiency of packages; nor for inland damage; nor for the obliteration, errors, insufficiency, or absence of marks, numbers, address, or description; nor for risk of craft, hull, or transshipment; nor for any loss or damage caused by the prolongation of the voyage, and that the carrier shall not be concluded as to correctness of statements herein of quality, quantity, gauge, contents, weight, and value.

General Average payable according to York-Antwerp Rules. If the owner of the steamer shall have exercised due diligence to make said steamer in all respects seaworthy and properly manned, equipped, and supplied, it is hereby agreed that in case of danger, damage, or disaster resulting from fault or negligence of the pilot, master or crew in the navigation or management of the steamer, or from latent or other defects, or unseaworthiness of the steamer, whether existing at time of shipment, or at the beginning of the voyage, but not discoverable by due diligence, the consignees or owners of the cargo shall not be exempted from liability for contribution in General Average, or for any special charges incurred, but, with the shipowner, shall contribute in General Average, and shall pay such special charges, as if such danger, damage, or disaster had not resulted from such fault, negligence, latent, or other defects or unseaworthiness.

2. That this shipment until delivery at the port (B) is subject to all the terms and provisions of, and all the exemptions from liability contained in, the act of Congress of the United States, approved on the 13th day of February, 1893, and entitled "An act relating to the navigation of vessels, etc."

3. That the value of each package receipted for as above does not exceed the sum of one hundred dollars unless otherwise stated herein, on which basis the rate of freight is adjusted.

4. That the carrier shall not be liable for articles specified in Section 4281 of the Revised Statutes of the United States, unless written notice of the true character and value thereof is given at the time of lading and entered in the bill of lading.

5. That shippers shall be liable for any loss or damage to steamer or cargo, caused by inflammable, explosive, or dangerous goods, shipped without full disclosure of their nature, whether such shipper be principal or agent; and such goods may be thrown overboard or destroyed at any time without compensation.

6. That the carrier shall have a lien on the goods for all freights, primages, and charges, and also for all fines or damages which the steamer or cargo may incur or suffer by reason of the illegal, incorrect, or insufficient marking, numbering or addressing of packages or description of their contents.

7. That in case the steamer shall be prevented from reaching her destination by Quarantine, the carrier may discharge the goods into any depot or lazaretto, and such discharge shall be deemed a final delivery under this contract, and all the expenses thereby incurred on the goods shall be a lien thereon.

8. That the steamer may commence discharging immediately on arrival and discharge continuously, any custom of the port to the contrary notwithstanding, the Collector of the port being hereby authorized to grant a general order for discharge immediately on arrival, and if the goods be not taken from the steamer by the consignee directly they come to hand in discharging the steamer, the master or steamer's agent to be at liberty to enter and land the goods, or put them into craft or store at the owner's risk and expense, when the goods shall be deemed delivered and steamer's responsibility ended, but the steamer and carrier to have a lien on such goods until the payment of all costs and charges so incurred.

9. That if on a sale of the goods at destination for freight and charges, the proceeds fail to cover said freight and charges, the carrier shall be entitled to recover the difference from the shipper.

10. That full freight is payable on damaged or unsound goods; but no freight is due on any increase in bulk or weight caused by the absorption of water during the voyage.

11. That in the event of claims for short delivery when the steamer reaches her destination, the price shall be the market price at the port of destination on the day of the steamer's entry at the customhouse, less all charges saved, steamer being only responsible for such part of the goods as have been actually delivered to said steamer at the port in the United States, and steamer not liable for any loss or damage that may have occurred before such delivery, while agreeing to promptly present to inland carriers for account of owners of goods any claims for shortage or loss or damage that may have occurred before delivery at the said port.

12. That merchandise on wharf awaiting shipment or delivery be at shipper's risk of loss or damage not happening through the fault or negligence of the said owner, master, agent, or manager of the steamer, any custom of the port to the contrary notwithstanding.

13. That this bill of lading, duly indorsed, be given up to the steamer's consignee in exchange for delivery order.

14. That freight prepaid will not be returned, goods lost or not lost.

15. That parcels for different consignees collected or made up in single packages addressed to one consignee, pay full freight on each parcel.

16. That freight payable on weight is to be paid on gross weight landed from ocean steamer, unless otherwise agreed to or herein otherwise provided, unless the carrier elects to take the freight on the bill of lading weight, but inland freight and charges paid on wheat, peas, maize, or other grain, or seed, or other bulk articles, from point of shipment to seaboard, shall be paid by consignee at destination on the weight delivered on board ocean steamer.

17. It is stipulated that in case the whole or any part of the articles specified herein be prevented by any cause from going in the first steamer leaving after the arrival of such articles at said port, the carrier is only bound to forward them by succeeding steamers employed in the steamship line, or if deemed necessary by said carrier it may forward them in other steamers.

18. That the property covered by this bill of lading is subject to all conditions expressed in the regular forms of bills of lading in use by the steamship company at the time of shipment, and to all local rules and regulations at port of destination not expressly provided for by the clauses herein.

19. That if the goods are destined beyond the port (B), the transshipment to connecting carrier shall be at the risk of the owner of the goods, but at steamer's expense, and that all liability of the steamship company hereunder terminates on due delivery to connecting carrier.

III.

With respect to the service after delivery at the port (B), and until delivery at ultimate destination, if destined beyond that port, it is agreed that:

1. In case the regular steamship service to final port of delivery should for any reason be suspended or interrupted, the carrier, at the option of the owner or consignee of the goods, or the holder of the bill of lading, may forward the goods to the nearest available port, this to be considered a final delivery; or to store them at the port (B) above mentioned at the risk and expense of the goods until regular service to final port of destination is opened again.

2. That the property shall be subject exclusively to all the conditions of the carrier or carriers completing the transit; the duty of notification above provided for shall fall exclusively within the obligation of the carrier completing the transit, and no prior carrier shall be responsible for the fulfillment of that obligation.

AND FINALLY, in accepting this bill of lading, the shipper, owner, and consignee of the goods, and the holder of the bill of lading agree to be bound by all of its stipulations, exceptions, and conditions, whether written or printed, as fully as if they were all signed by such shipper, owner, consignee, or holder.

IN WITNESS WHEREOF, The Agent signing on behalf of the said..... and

..... severally, but not jointly, hath affirmed to

..... bills of lading, all of this tenor and date, one of which bills being accomplished, the others to stand void.

....., Agent,

.....

Received \$..... to apply in prepayment of the charges herein described.

I
We accept all the conditions of this bill of lading.

....., Agent

(Shipper or Agent for Shipper.)

86728°—22. (Form No. 356.) No. 2

affirmed to
Bills of Lading, all of t

WITH RESPECT TO THE SERVICE AFTER DELIVERY

1. In case the regular vessel service to final port of delivery of the goods, or the holder of the bill of lading, may forward (B) second above mentioned at the risk and expense of the good.

2. The property shall be subject exclusively to all the conditions of the bill of lading.

3. The addressing of notice to notify party shall be exclusively stipulations, exceptions, and conditions, whether written or printed.

[illegible]

WITH RESPECT TO THE SERVICE AFTER
AT THE PORT (B) SECOND ABOVE MENTIONED

10. When the property is transported from port (A) to port (B) and the port of transshipment is a part of the export provisions of the foregoing conditions shall apply from port (A) to port (B).

AGREED THAT:

as hereinafter provided.
sed by the act of God, the
rier or party in possession
be liable for loss, damage,
request, or resulting from

quarantine regulations, or
 case when the property is
 penses of whatever nature
 loss or damage occasioned
 kind occasioned by quar-
 nished by the carrier, its
 ges they may be required
 ect at such place.

with reasonable dispatch
railroad or route between
be the same as though the

property, no carrier shall be prohibited by law), that the property, providing no other basis on which the rate is based:

within nine months after
ch delivery has elapsed.

been effected upon or on
ant for the premium paid

ing at owner's cost. Each
the same for greater con-

ched to the car; property
in the building.

r of their nature, shall be

shall pay the same before
be paid upon the articles

ater over any part of said
s contained in this bill of

y the design or neglect of

lied, no such carrier shall nances, whether existing when for any reason it is ed, to transfer, transship, ing and repairs. Except 1 deck.

he cargo shall contribute
rifice or expenditure was

f the sea, then as to such
ed into the conditions of

ed by or on behalf of rail

Order Bill of Lading—ORIGINAL (To be printed on yellow paper)

Straight Bill of Lading—ORIGINAL—Not Negotiable (To be printed on white paper)

The _____ (Issuing) _____ Company Shipper No. _____
Agent's No. _____

EXPORT BILL OF LADING NO.....LOT NO.....CONTRACT NUMBERS.....

DATED AT.....THIS.....DAY OF.....192.....

RECEIVED AT.....

FROM

the following property, in apparent good order (contents and condition of contents of packages unknown), marked, numbered, consigned, and destined as indicated below:

CONSIGNEE ORDER OF

DESTINATION	DATE	TIME	STATUS	REMARKS
NEW YORK	10/15/2010	14:30	OK	Arrived on time
LOS ANGELES	10/16/2010	08:00	OK	Departed on time
CHICAGO	10/17/2010	12:00	OK	Arrived on time
DENVER	10/18/2010	16:00	OK	Arrived on time
PHOENIX	10/19/2010	09:00	OK	Arrived on time
SAN ANTONIO	10/20/2010	11:00	OK	Arrived on time
HOUSTON	10/21/2010	13:00	OK	Arrived on time
MEMPHIS	10/22/2010	15:00	OK	Arrived on time
ATLANTA	10/23/2010	17:00	OK	Arrived on time
MIAMI	10/24/2010	19:00	OK	Arrived on time
FLORIDA	10/25/2010	21:00	OK	Arrived on time
ALABAMA	10/26/2010	23:00	OK	Arrived on time
MISSISSIPPI	10/27/2010	01:00	OK	Arrived on time
LOUISIANA	10/28/2010	03:00	OK	Arrived on time
ARKANSAS	10/29/2010	05:00	OK	Arrived on time
KANSAS	10/30/2010	07:00	OK	Arrived on time
OKLAHOMA	10/31/2010	09:00	OK	Arrived on time
NEBRASKA	11/01/2010	11:00	OK	Arrived on time
MINNESOTA	11/02/2010	13:00	OK	Arrived on time
WISCONSIN	11/03/2010	15:00	OK	Arrived on time
ILLINOIS	11/04/2010	17:00	OK	Arrived on time
INDIANA	11/05/2010	19:00	OK	Arrived on time
MICHIGAN	11/06/2010	21:00	OK	Arrived on time
OHIO	11/07/2010	23:00	OK	Arrived on time
PENNSYLVANIA	11/08/2010	01:00	OK	Arrived on time
DELAWARE	11/09/2010	03:00	OK	Arrived on time
MARYLAND	11/10/2010	05:00	OK	Arrived on time
VIRGINIA	11/11/2010	07:00	OK	Arrived on time
NORTH CAROLINA	11/12/2010	09:00	OK	Arrived on time
SOUTH CAROLINA	11/13/2010	11:00	OK	Arrived on time
GEORGIA	11/14/2010	13:00	OK	Arrived on time
FLORIDA	11/15/2010	15:00	OK	Arrived on time
ALABAMA	11/16/2010	17:00	OK	Arrived on time
MISSISSIPPI	11/17/2010	19:00	OK	Arrived on time
LOUISIANA	11/18/2010	21:00	OK	Arrived on time
ARKANSAS	11/19/2010	23:00	OK	Arrived on time
KANSAS	11/20/2010	01:00	OK	Arrived on time
OKLAHOMA	11/21/2010	03:00	OK	Arrived on time
NEBRASKA	11/22/2010	05:00	OK	Arrived on time
MINNESOTA	11/23/2010	07:00	OK	Arrived on time
WISCONSIN	11/24/2010	09:00	OK	Arrived on time
ILLINOIS	11/25/2010	11:00	OK	Arrived on time
INDIANA	11/26/2010	13:00	OK	Arrived on time
MICHIGAN	11/27/2010	15:00	OK	Arrived on time
OHIO	11/28/2010	17:00	OK	Arrived on time
PENNSYLVANIA	11/29/2010	19:00	OK	Arrived on time
DELAWARE	11/30/2010	21:00	OK	Arrived on time
MARYLAND	12/01/2010	23:00	OK	Arrived on time
VIRGINIA	12/02/2010	01:00	OK	Arrived on time
NORTH CAROLINA	12/03/2010	03:00	OK	Arrived on time
SOUTH CAROLINA	12/04/2010	05:00	OK	Arrived on time
GEORGIA	12/05/2010	07:00	OK	Arrived on time
FLORIDA	12/06/2010	09:00	OK	Arrived on time
ALABAMA	12/07/2010	11:00	OK	Arrived on time
MISSISSIPPI	12/08/2010	13:00	OK	Arrived on time
LOUISIANA	12/09/2010	15:00	OK	Arrived on time
ARKANSAS	12/10/2010	17:00	OK	Arrived on time
KANSAS	12/11/2010	19:00	OK	Arrived on time
OKLAHOMA	12/12/2010	21:00	OK	Arrived on time
NEBRASKA	12/13/2010	23:00	OK	Arrived on time
MINNESOTA	12/14/2010	01:00	OK	Arrived on time
WISCONSIN	12/15/2010	03:00	OK	Arrived on time
ILLINOIS	12/16/2010	05:00	OK	Arrived on time
INDIANA	12/17/2010	07:00	OK	Arrived on time
MICHIGAN	12/18/2010	09:00	OK	Arrived on time
OHIO	12/19/2010	11:00	OK	Arrived on time
PENNSYLVANIA	12/20/2010	13:00	OK	Arrived on time

NOTIFY PARTY

MARKS AND NUMBERS	ARTICLES	*WEIGHT SUBJECT TO CORRECTION	*MEASURE- MENT SUBJECT TO CORRECTION
CAR NUMBERS			

*U. S. Law requires Agent issuing Bill of Lading to write either "Shipper's" or "Carrier's before "weight." 9

To be carried to the Port (A) of and thence by
to the Port (B) (or so near thereto as vessel may safely get
with liberty to call at any port or ports in or out of the customary route, when for the purpose of saving life or property), as provided for herein, and to be there delivered
in like good order and condition as above consigned, or to consignee's assigns, or to another carrier on the route to destination of consigned beyond said port (B),
upon payment immediately on discharge of the property, of the freight thereon, at the rate (INLAND) from
to of cents per one hundred pounds gross weight,
and (OCEAN) from to of cents;
and (if beyond Port B) from to of cents,
per United States gold currency, or equivalent in funds of country of destination,
and advanced charges

(\$), with all other charges and average, without any allowance of credit or discount; settlement to be made in United States gold currency or its equivalent in funds of country of destination, amount to be paid by receivers at current rate of New York exchange as officially quoted on the day the vessel is entered at the Custom House at her port of discharge.

In consideration of the rate of freight herein named, it is hereby stipulated that the service to be performed hereunder shall be subject to the conditions, whether printed or written, contained herein or on the back hereof, and said conditions are hereby agreed to by the shipper and by him accepted for himself and his assigns as just and reasonable.

IN WITNESS WHEREOF, the agent signing on behalf of the said, The (Issuing) Company, jointly and severally for itself and its inland connections, and of the said Ocean Steamship Company, or Ocean Steamer and her owner, severally and not jointly, hath affirmed to Bills of Lading, all of this tenor and date, one of which Bills being accomplished, the other to stand void.

....., Agent.
On behalf of carriers as above stated.

CONTRACT TERMS AND CONDITIONS.

I.

WITH RESPECT TO THE SERVICE UNTIL DELIVERY AT THE PORT (A) FIRST MENTIONED ABOVE, IT IS AGREED THAT:

1. The carrier or party in possession of any of the property herein described shall be liable for any loss thereof or damage thereto except as hereinafter provided. No carrier or party in possession of any of the property herein described shall be liable for any loss thereof or damage thereto, or delay caused by the act of God, the public enemy, the authority of law, or the act or default of the shipper or owner, or for natural shrinkage. Except in case of negligence of the carrier or party in possession and the burden to prove freedom from such negligence shall be on the carrier or party in possession, the carrier or party in possession shall not be liable for loss, damage, or delay occurring while the property is stopped and held in transit upon the request of the shipper, owner, or party entitled to make such request, or resulting from a defect or vice in the property, or from riots or strikes.

In case of quarantine the property may be discharged at risk and expense of owners into quarantine depot or elsewhere, as required by quarantine regulations, or authorities, or for the carrier's dispatch, at nearest available point in carrier's judgment, and in any such case carrier's responsibility shall cease when the property is so discharged, or the property may be returned by carrier at owner's expense to shipping point, earning freight both ways. Quarantine expenses of whatever nature or kind upon or in respect to the property shall be borne by the owners of the property or be a lien thereon. The carrier shall not be liable for loss or damage occasioned by fumigation or disinfection or other acts required or done by quarantine regulations or authorities, nor for detention, loss or damage of any kind occasioned by quarantine or the enforcement thereof. No carrier shall be liable except in case of negligence for any mistake or inaccuracy in any information (furnished by the carrier, its agents, or officers, as to quarantine laws or regulations. The shipper shall hold the carriers harmless from any expense they may incur, or damages they may be required to pay, by reason of the introduction of the property covered by this contract into any place against the quarantine laws or regulations in effect at such place.

2. No carrier is bound to transport said property by any particular train or vessel, or in time for any particular market or otherwise than with reasonable dispatch unless by specific agreement indorsed hereon. Every carrier shall have the right in case of physical necessity to forward said property by any railroad or route between the point of shipment and the point of destination; but if such diversion shall be from a rail to a water route, the liability of the carrier shall be the same as though the entire carriage were by rail.

If the property covered by this bill of lading is hidden from view and the shipper has specifically stated in the bill of lading the value of the property, no carrier shall be liable beyond the amount so specifically stated, whether or not the loss or damage occurs from negligence. Provided, (in all cases not prohibited by law), that the amount of any loss or damage, including loss or damage arising from delay, for which any carrier is liable, shall be the actual value of the property, providing no other value shall have been declared or agreed upon in writing as the released value of the property as determined by the classification or tariff upon which the rate is based; and such value shall be the maximum amount to be recovered whether or not the loss occurs from negligence.

Claims for loss, damage, or delay must be made in writing to the carrier at the point of export or to the carrier issuing this bill of lading within nine months after delivery of the property at said port (A), or in case of failure to make such delivery, then within nine months after a reasonable time for such delivery has elapsed. Unless claims are so made the carrier shall not be liable.

Any carrier or party liable on account of loss or damage to any of said property shall have the full benefit of any insurance that may have been effected upon or on account of said property, so far as this shall not avoid the policies or contracts of insurance: Provided, That the carrier reimburse the claimant for the premium paid thereon.

3. Except where such service is required as the result of carrier's negligence, all property shall be subject to necessary coverage and baling at owner's cost. Each carrier over whose route cotton or cotton linters is to be transported hereunder shall have the privilege, at its own cost and risk, of compressing the same for greater convenience in handling or forwarding, and shall not be held responsible for deviation or unavoidable delays in procuring such compression.

4. Property taken from a station or siding at which there is no regularly appointed freight agent shall be at owner's risk until engine is attached to the car; property taken from a wharf or landing at which there is no regularly appointed freight agent shall be at owner's risk until loaded into the vessel.

5. No carrier will carry or be liable in any way for any documents, specie or articles of extraordinary value not specifically rated in the published classifications or tariffs unless a special agreement to do so and a stipulated value of the articles are indorsed hereon.

6. Every party, whether principal or agent, shipping explosives or dangerous goods, without previous full written disclosure to the carrier of their nature, shall be liable for and indemnify the carrier against all loss or damage caused by such goods, and such goods may be warehoused at owner's risk and expense or destroyed without compensation.

7. The owner or consignee shall pay the freight, and average, if any, and all other lawful charges accruing on said property, and, if required, shall pay the same before delivery. If, upon inspection, it is ascertained that the articles shipped are not those described in this bill of lading, the freight charges must be paid upon the articles actually shipped.

8. Except in case of diversion from rail to water route, as provided for in section 2 hereof, if all or any part of said property is carried by water over any part of said route, such water carriage shall be subject to the liabilities, limitations, and exemptions provided by statute and to the conditions contained in this bill of lading not inconsistent therewith or with this section.

No such carrier by water shall be liable for any loss or damage resulting from any fire happening to or on board the vessel unless caused by the design or neglect of such carrier.

If the owner shall have exercised due diligence in making the vessel in all respects seaworthy and properly manned, equipped, and supplied, no such carrier shall be liable for any loss or damage resulting from the perils of the lakes, seas, or other waters, or from latent defects in hull, machinery, or appurtenances, whether existing prior to, at the time of, or after sailing, or from collision, stranding, or other accidents of navigation, or from prolongation of the voyage. And, when for any reason it is necessary, any vessel carrying any or all of the property herein described shall have the liberty to call at any port or ports, to tow and be towed, to transfer, transship, or lighter, to load and discharge goods at any time, and assist vessels in distress, to deviate for the purpose of saving life or property, and for docking and repairs. Except in case of negligence, such carrier shall not be responsible for any loss or damage to property if it be necessary or is usual to carry the same upon deck.

If the shipowner shall have complied with the provisions of section 3 of the Harter Act, it is hereby agreed that the owners or consignees of the cargo shall contribute with the shipowner in general average, and shall pay for salvage or special charges properly incurred, even though the necessity for the sacrifice or expenditure was brought about by fault in navigation or management of the ship.

If the property is being carried under a tariff which provides that any carrier or carriers party thereto shall be liable for loss from perils of the sea, then as to such carrier or carriers the provisions of this section shall be modified in accordance with the tariff provisions, which shall be regarded as incorporated into the conditions of this bill of lading.

The term "water carriage" in this section shall not be construed as including lighterage in or across rivers, harbors, or lakes, when performed by or on behalf of rail carriers.

9. In case the whole or any part of the property specified herein be prevented by any cause from going from the port of export in the vessel for which intended, the carrier hereunder then in possession is at liberty to forward said property by another vessel of said line, or, if deemed necessary, by any other vessel, dispatching notice thereof to the shipper.

This contract is fully executed and accomplished, and all liability hereunder terminates upon the delivery of the said property to the exporting steamer, her master, agents, or servants, and the inland freight, if not prepaid, and all other charges hereinbefore provided for shall be a first lien on the property, and shall be due and payable by the steamship company or vessel.

10. When the property is transported from port (A) to the receiving port of the foreign exporting vessel, and thence transshipped to port (B), all of the terms and provisions of the foregoing conditions shall apply from port (A) until the delivery at the receiving port of the foreign exporting vessel; but the transportation between port (A) and the port of transshipment is a part of the export movement.

II.

WITH RESPECT TO THE SERVICE AFTER DELIVERY AT THE PORT (A) FIRST ABOVE MENTIONED, AND UNTIL DELIVERY AT THE PORT (B) SECOND ABOVE MENTIONED, IT IS AGREED THAT—

1. The vessel shall have liberty to sail with or without pilots; the carrier shall have liberty to convey goods in craft and/or lighters to and from the vessel at the risk of the owners of the goods; and, in case the vessel shall put into a port of refuge, or be prevented from proceeding in the ordinary course of her voyage, to transship the goods to their destination by any other vessel dispatching notice thereof to the shipper and consignee. The ocean carrier shall not be liable for loss, damage, delay or default occurring from any cause whatsoever except where the negligence of the ocean carrier is the proximate cause of the injury complained of.

General average shall be payable according to York-Antwerp Rules 1930, and as to any matter not therein provided for, according to the law and usage of the Port of New York. If the shipowner shall have exercised due diligence to make the vessel in all respects seaworthy and properly manned, equipped, and supplied, it is hereby agreed that in case of danger, damage, or disaster resulting from faults or errors in navigation, or in the management of the vessel, or from any latent or other defects in the vessel, her machinery or appurtenances, or from unseaworthiness, whether existing at the time of shipment or at the beginning of the voyage (provided the latent or other defects or the unseaworthiness was not discoverable by the exercise of due diligence), the shippers, consignees, and/or owners of the cargo shall nevertheless pay salvage and any special charges incurred in respect of the cargo, and shall contribute with the shipowner in General Average to the payment of any sacrifices, losses, or expenses of a vessel or cargo which may be incurred for the purpose of saving life or property, or for docking and repairs.

2. This shipment until delivery at the port (B) second above mentioned is subject to all the terms and provisions of, and all the exemptions from liability contained in, the Act of Congress of the United States, approved on the 13th day of February, 1893, and entitled, "An Act relating to the navigation of vessels, etc."

This shipment is subject to the provisions of Sections 4281-4286, inclusive, of the Revised Statutes of the United States.

3. The value of each package shipped hereunder does not exceed two hundred fifty dollars, unless otherwise stated herein, on which basis the freight is adjusted, and the ocean carrier's liability shall in no case exceed that sum or the invoice value including freight charges and duty if paid, whichever shall be the least, unless a value in excess thereof be specially declared, and stated herein, and extra freight as may be agreed upon, paid. Any partial loss or damage for which the ocean carrier may be liable shall be adjusted pro rata on the above basis.

4. Shippers shall be liable for any loss or damage to vessel or cargo, caused by inflammable, explosive, or dangerous goods, shipped without full disclosure of their nature, whether such shipper be principal or agent; and such goods so shipped may be thrown overboard or destroyed at any time without compensation.

5. The carrier shall have a lien on the goods for all freights and charges and any sums that may be due under this bill of lading, and also for all fines or damages which the vessel or cargo may incur or suffer by reason of the illegal, incorrect, or insufficient marking, numbering, or addressing of packages or description of their contents.

6. If the vessel is prevented from reaching her destination by Quarantine, the ocean carrier may discharge the goods into any depot or lazaretto, under suitable available protection, dispatching notice thereof to the shipper and consignee, and such discharge shall be deemed a final delivery under this contract, and all the expenses thereby incurred on the goods shall be a lien thereon.

7. The vessel may commence discharging immediately on arrival and discharge continuously, any custom of the port to the contrary notwithstanding, the Collector or other proper officer of the Port being hereby authorized to grant a general order for discharge immediately on arrival, and if the goods be not taken from the vessel by the consignee directly they come to hand, in discharging the vessel, the master or vessel's agent be at liberty to enter and land the goods, or put them into craft or store at the owner's risk and expense, upon dispatch of notice to consignee or shipper, when the goods shall be deemed delivered and vessel's responsibility ended, but the vessel and ocean carrier shall have a lien on such goods until the payment of all costs and charges so incurred.

8. If on a sale of the goods at destination for freight and charges, the proceeds fail to cover said freight and charges, the ocean carrier shall be entitled to recover the difference from the shipper, owner, or consignee.

Full freight is payable on damaged or unsound goods; but no freight is due on any increase in bulk or weight caused by the absorption of water during the voyage. Freight prepaid will not be returned under any circumstance, provided the goods have been loaded on the vessel.

9. In the event of claims for short delivery when the vessel reaches her destination, the value shall be adjusted as per conditions under clause 3, less all charges saved, vessel being responsible only for such part of the goods as have been actually delivered to the vessel at the port (A) above mentioned, and vessel not liable for any loss or damage that may have occurred before such delivery, while awaiting to present promptly to inland carriers for account of owners of goods any claims for shortage or loss or damage that may have occurred before delivery of goods at the port (A) above mentioned.

10. Goods on wharf awaiting shipment or delivery shall not be at ocean carrier's risk of loss or damage not happening through the fault or negligence of the owner, master, agent, or manager of the vessel, any custom of the port to the contrary notwithstanding.

11. This bill of lading shall be given up to the vessel's consignee in exchange for delivery order.

12. Freight payable on weight is to be paid on gross weight as declared from ocean vessel, unless herein otherwise provided, or unless the carrier elects to take the freight on the bill of lading weight, but inland freight and charges paid on the bill of lading weight shall be paid by consignee at destination on the weight delivered on board ocean vessel.

13. If, for any cause, the whole or any part of the articles specified herein do not go in the vessel for which intended, the carrier shall forward them by other vessel or vessels employed on the Steamship Line, or by other vessels.

14. The property covered by this bill of lading is subject to all local rules and regulations at port of destination not inconsistent herewith.

15. If the goods covered by this bill of lading are consignees, beyond the port (B), the delivery to connecting carrier shall be at the risk and expense of the vessel, and all liability of the ocean carrier hereunder terminates on delivery to connecting carrier.

III.

WITH RESPECT TO THE SERVICE AFTER DELIVERY AT THE PORT (B) SECOND ABOVE MENTIONED, AND UNTIL DELIVERY AT ULTIMATE DESTINATION IF DESTINED BEYOND THAT PORT, IT IS AGREED THAT—

1. In case the regular vessel service to final port of delivery of the goods, or the holder of the bill of lading, may forward the goods to the nearest available port, this to be considered a final delivery; or to store them at the port until regular service to final port of destination is opened again.

2. The property shall be subject exclusively to the carrier's obligation to transport the goods to the destination of the carrier or carriers designated in the transit.

3. The addressing of notice to notify party shall be exclusively to the owner, and consignee of the goods, and the holder of the bill of lading, agree to be bound by all its stipulations, exceptions, and conditions, whether written or printed, as fully as if they were all signed by such shipper, owner, consignee, or holder.

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UNIVERSITY OF ILLINOIS LIBRARY



MARKS AND NUMBERS	ARTICLES
CAR NUMBERS	<p>.....Gross Weight.....(subject to correction)</p> <p>* If S. Jan receives Agent's invoice Bill of Lading to write either "Shimmer's" or "Carrier's" before "Weight"</p>

United States gold currency, or equivalent in funds of country of destination, and advanced charges
 (\$), with all other charges and average, without any allowance of credit or discount, settlement to be made on the basis of conditions as expressed
 in the regular form of bill of lading in use by the Steamship Company at time of ocean shipment.

7. With respect to the service until delivery at the port (A) first above mentioned it is agreed that—

II.—With respect to the service after delivery at the port (A) first above mentioned, and until delivery at the port (B) second above mentioned, it is agreed that—

General average payable according to York-Antwerp Rules 1900. If the owners shall have exercised due diligence to make the vessel in all respects seaworthy, properly manned, equipped, and supplied, it is hereby agreed that in case of danger, damage, or disaster resulting from faults or errors in navigation, or in the management of the vessel, or from any latent or other defects in the vessel, her machinery or appurtenances, or from unseaworthiness, whether existing at the time of departure or at the beginning of the voyage (provided the latent or other defects or the unseaworthiness was not discoverable by due diligence), the shipowner, consignee, and/or owners of the cargo shall nevertheless pay salvage and any special charges incurred in respect of the cargo, and shall contribute with the shipowner in General Average to the payment of any sacrifices, losses, or expenses of a General Average nature that may be made or incurred for the common benefit or to relieve common danger.

1. In case the regular steamship service to final port of delivery should for any reason be suspended or interrupted, the carrier shall have the right to deliver the goods at the nearest available port of call, provided that such delivery is considered a final delivery; or to store them at the port of destination until the regular service resumes.
2. The property shall be subject exclusively to all the conditions of the carrier or carriers completing the transit; the addressing of notice above provided for shall be exclusively the obligation of the carrier completing the transit.

On behalf of carriers severally but not jointly.

Submitted by the Uniform Bill of Lading Committee, 143 Liberty Street, New York, in response to request, I. C. C. Docket 4844 of June 15, 1920, that the carriers by railroad submit on or before August 1, 1920, tentative forms of Through Export Bills of Lading.

From the first settlement of the city in 1630 to the present time, the city has grown from a small fishing village to a great metropolis. The city has been the seat of many important events in the history of the United States, and has played a prominent part in the development of the nation.

The city has been the home of many famous men, and has been the scene of many important events. The city has been the seat of many important events in the history of the United States, and has played a prominent part in the development of the nation.

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[Form of Through Export Bill of Lading Prescribed by the Interstate Commerce Commission.]

IN CONNECTION WITH OTHER CARRIERS ON THE ROUTE

Party to whom arrival notice is to be addressed.....

*U. S. Law requires Agent issuing Bill of Lading to write either "Shipper's" or "Carrier's" before "Weight."

CONTRACT TERMS AND CONDITIONS.

By..... On behalf of carriers severally but not jointly.
86728°—22. (Face p. 356.) No. 6

No. 4844.

DOMESTIC BILL OF LADING AND LIVE STOCK CONTRACT.
IN THE MATTER OF BILLS OF LADING.

Submitted February 11, 1921. Decided October 21, 1921.

1. Rules and regulations made in *Bills of Lading*, 52 I. C. C., 671, prescribing form of uniform domestic bill of lading, modified to conform to the requirements of the interstate commerce act as amended on February 28, 1920.
2. Rules and regulations made prescribing form of uniform live stock contract.

R. Walton Moore for Director General of Railroads; *Henry Wolf Bikelé* for Director General and respondent carriers; *T. J. Norton* and *James L. Coleman* for Director General and western lines; *C. B. Northrop* for Director General and federally controlled roads, southern region; *G. C. Devol* for railroads in southern region; *J. L. Harris* for director of traffic, United States Railroad Administration; *R. N. Collyer* for Official Classification Committee; *R. C. Fyfe* for Western Classification Committee; *H. A. Scandrett*, *F. H. Wood*, *C. S. Jefferson*, *B. W. Scandrett*, *Homer W. Davis*, *A. B. Enoch*, *Bruce Scott*, *J. C. James*, and *Robert C. Fyfe* for western carriers; *Henry Wolf Bikelé*, *Clyde Brown*, *F. A. Farnham*, *Parker McCollister*, *Theodore W. Reath*, *H. A. Taylor*, and *R. N. Collyer* for eastern carriers; *R. V. Fletcher*, *E. D. Mohr*, *E. A. Smith*, *J. E. Crosland*, *J. J. Hooper*, *C. B. Northrop*, and *W. P. Levis* for carriers in southern classification territory; and *Thaddeus H. Swank* for coastwise steamship lines.

A. E. Helm, commerce counsel, for Public Utilities Commission of Kansas; *J. H. Henderson*, commerce counsel of Iowa, and *Walter Condran* for Board of Railroad Commissioners of Iowa and shippers; *A. F. Striker* for South Omaha Live Stock Exchange and National Live Stock Exchange; *S. H. Cowan* for American National Live Stock Association and National Live Stock Shippers League; *W. R. Scott* for National Live Stock Shippers League; *Edward F. Keefer* for National Live Stock Shippers League, State Live Stock Association of Illinois, and National Live Stock Exchange; *E. M. Hughes* for Chicago Live Stock Exchange; *C. B. Heineman* for National Live Stock Exchange and Morris & Company; *R. D. Rynder* for Swift & Company; *H. K. Crafts* and *W. C. Watson* for Armour & Company; *Butler, Lamb, Foster & Pope*, by *William E. Lamb*, *Harry Eugene Kelly*, and *Karl D. Loos*, for National Society of Record Associations; *Clair R. Hillyer* and *Sims, Welch & Gedman* for Live Poultry & Dairy Shippers Traffic Association; *Clifford Thorne* and *Ralph*

Merriam for Corn Belt Meat Producers Association and National Live Stock Shippers League; *E. G. Wylie*, freight commissioner, Greater Des Moines Committee, Incorporated, for shippers and receivers of freight at Des Moines, Iowa; *Frank Witherspoon* for Kansas City Live Stock Exchange and National Live Stock Exchange.

Frank T. Bentley, *Luther M. Walter*, *John S. Burchmore*, and *E. F. Lacey* for National Industrial Traffic League; *Butler*, *Lamb*, *Foster & Pope*, *George E. Farrand*, *William E. Lamb*, and *Karl D. Loos* for California Citrus League; *William J. Pitt* for Paint Manufacturers Association of the United States, National Varnish Manufacturers Association, and Philadelphia Paint, Oil and Varnish Club; *A. P. Husband* and *E. S. Wagner* for Millers' National Federation; *Walter E. McCornack* for interior Iowa packers; *L. G. Macomber* for Toledo Chamber of Commerce and Toledo Produce Exchange; *W. J. Womer* for National Retail Coal Merchants Association; *C. B. Heinemann* for Institute of American Meat Packers; *W. W. Manker* for Armour & Company; *C. O. Cornwell* for Cudahy Packing Company; *Henry L. Goemann* and *John W. Radford* for Grain Dealers National Association; *Milton C. Stern* for Autographic Register Manufacturers; *F. S. Keiser* for Commercial Club of Duluth, Minn.; *F. R. Levins* for Rust-Parker Company; *D. O. Moore* for Chamber of Commerce of Pittsburgh, Pa.; *R. L. Brix* for American Fruit & Vegetable Shippers Association; *E. S. Gubernator* for Lehigh Portland Cement Company and Mitchell Lime Company; *L. H. Baughman* for Toledo Scale Company; *Oscar Loewenbach* for B. Loewenbach Company, Incorporated; *Herman Mueller* for St. Paul Association; *L. E. Banta* for Indianapolis Board of Trade; *Clifford Thorne* and *W. Y. Wildman* for American Farm Bureau Federation, Western Petroleum Refiners Association, American Independent Petroleum Association, and Farmers National Grain Dealers Association; *M. D. Smiley* for Curtis Companies, Incorporated, and Wholesale Sash & Door Association; *Ralph Merriam* for National Association of Chewing Gum Manufacturers, Wm. Wrigley, Jr., Company, Old Ben Coal Corporation, Morton Salt Company, and Cooper Underwear Company; *C. G. Hylander* for William Wrigley, Jr., Company; *H. L. Laird* for Northwestern Traffic & Service Bureau; *Francis S. Laws* for Insurance Company of North America; *H. G. Wilson* for American Cement Plaster Company; *Sam Faier* for Wholesale Sash & Door Association; *J. S. Brown* for Board of Trade of the City of Chicago; *Henry T. Clarke* for Omaha Grain Exchange; *W. T. Hayes* for Sears, Roebuck & Company; *R. R. Hargis* for Wilson & Company, Incorporated; *A. L. Hoge* for Steel Sales Corporation and Superior Steel Company; *R. D. Waller* for Farley & Loetscher Manufacturing Company; *L. E.*

Muntwyler for Montgomery Ward & Company; *W. M. O'Keefe* for National Poultry, Butter & Egg Association; *J. L. Bowlus* for Milwaukee Chamber of Commerce; *H. R. Park* for Chicago Live Stock Exchange; *C. O. Dawson* for Sprague, Warner & Company; *A. B. Combs* for Marshall Oil Company; *E. H. Draper* for Western Grocer Company; *Frank Milhollan* for North Dakota Railroad Commission; *Robert Burns* and *John C. Scales* for National League of Commission Merchants of the United States; *F. T. Bentley* for Illinois Steel Company and affiliated corporations; and *William E. Lamb* for California Fruit Growers Exchange.

REPORT OF THE COMMISSION ON FURTHER HEARING.

HALL, *Commissioner*.

For the history of this proceeding reference may be had to our reports in *Bills of Lading*, 52 I. C. C., 671, and *Export Bill of Lading*, 64 I. C. C., 347. For the purposes of this report it is sufficient to state that in the former cases we prescribed the form and substance of the uniform domestic and export bills of lading. A third form of bill of lading, applicable to the transportation of shipments of live stock, was reserved for disposition in a supplemental report. On November 27, 1920, subsequent to the decision of the Supreme Court in *United States v. Alaska S. S. Co.*, 253 U. S., 113, we reopened the case for further hearing with respect to the form and substance of the proposed uniform domestic bill of lading. There was no further hearing regarding the proposed uniform live stock contract. This report will deal with the forms of the uniform domestic bill of lading and of the uniform live stock contract.

Our jurisdiction in the premises has been questioned. In *Export Bill of Lading, supra*, we considered our power to prescribe a uniform through export bill of lading, and the difference between our functions and those of the courts respecting bills of lading. Except as to the provisions of section 25 of the interstate commerce act, what was said there has equal application here and need not be repeated.

UNIFORM DOMESTIC BILL OF LADING.

In our report in *Bills of Lading, supra*, at pages 691 to 726, we discussed in detail the so-called domestic bill of lading, which is also used for shipments to adjacent foreign countries. Appendix A to that report showed both the recommendations of the carriers and the counter proposals of the shippers. Appendix B to that report is the uniform straight bill of lading prescribed by us.

The recent hearing developed little that was new, aside from the few changes necessitated by the amendments to the interstate commerce act. Both carriers and shippers reiterate proposals which

were considered and rejected in our report in *Bills of Lading, supra*. The National Industrial Traffic League submitted a proposed bill of lading which is reproduced as Appendix A hereto. The eastern carriers stand upon the terms of their domestic bill of lading, published in supplement No. 11 to official classification No. 1, and printed as Appendix B hereto. This form is also used by the western carriers. The southern carriers state that they desire uniformity, and submit that this can be secured by making slight modifications in the bill of lading used by the other carriers. On behalf of various steamship lines, operating in the coastwise service, suggestions were made which would have the effect of limiting the liability of such carriers by inserting in the bill prescribed by us certain water-line clauses. The suggestions of these water lines are shown as Appendix C.

The conditions in the uniform domestic bill of lading prescribed by us were divided into nine sections. No changes are suggested by the National Industrial Traffic League in sections 1, 3, 5, 6, 7, 8, and 9 of that bill. The league recommends changes in sections 2 and 4, and the insertion of a new section 9, making section 9 in our bill section 10. The suggested changes relate to provisions dealing with declared or released value of shipments, storage of unclaimed or undelivered freight, notice to consignor and consignee where property is lost or destroyed, and transportation in or across rivers, harbors, or lakes by lighter, car float, or car ferry.

Criticisms by the western carriers are summarized as follows:

The bill prescribed by the Commission is objectionable to the Western Carriers in the following respects:

- I. Use of the first sentence of the current bill, requiring the carriers to contract that they will insure against everything not specifically exempted by the conditions.
- II. Emasculation of the strikes and riots clause of the carrier's bill.
- III. Omission of the present open car provision.
- IV. Extending carrier's liability as insurer during "free time" and after "placement" for delivery.
- V. Elimination of the provision respecting liability for carload shipments at non-agency stations and on private or other sidings.
- VI. Relieving consignor from liability for freight charges.

The western carriers do not object to the change proposed by the league as to declared or released value. Those carriers and the league have agreed upon the wording of a paragraph dealing with the time for filing claims and suits.

We are of opinion, in view of the changes in the interstate commerce act made on February 28, 1920, and in the light of the entire record as supplemented at the recent hearing, that the bill of lading prescribed by us should be modified to read as shown in Appendix D hereto. We are of opinion and find that the rules and regulations

contained in the domestic bills of lading used by the carriers respondent hereto will be unreasonable for the future in so far as they differ from the rules and regulations made by us prescribing the uniform bill of lading appearing as Appendix D hereto, which we find will be reasonable for the future.

LIVE STOCK CONTRACT.

Final arguments in connection with the form and substance of the carriers' proposed uniform live stock bill of lading, or live stock contract, as this form of bill of lading is usually called, were had on March 5, 1919. The report was withheld pending the outcome of *United States v. Alaska S. S. Co. supra*.

Prior to the inception of the proceedings herein no attempt had been made on the part of the carriers as a whole to formulate a uniform or standard form of live stock contract. Many forms containing varying terms and conditions were, and are, in use. Many inequalities, unjust practices, and discriminations have resulted therefrom. The main difficulty encountered in the matter of formulating a uniform live stock contract grew out of the wide differences of opinion which existed between the shippers and carriers as to the interpretation to be given the statutory changes in the law of common carriers affecting (1) the right of a carrier subject to the interstate commerce act to contract for exemptions from liability for causes of loss, damage, or injury not due to its negligence, and (2) the right of such carrier to limit the amount of the shipper's recovery to declared or released values where it publishes alternative rates dependent upon such values.

As a result of the divergent views entertained by the shippers and the carriers little progress was made during the pendency of the earlier hearings in jointly formulating a uniform live stock contract. At the conclusion of those hearings we had before us for consideration two radically different proposed forms for the live stock contract, one submitted by the shippers and the other by the carriers. On August 9, 1916, just prior to the oral arguments but after the close of the hearings, the second Cummins amendment was approved. By this amendment the differences of opinion which previously existed as to the right of a carrier under the terms of the first Cummins amendment to limit its liability, or the amount of recovery, to the value agreed upon by carrier and shipper or declared by the shipper as a basis for rates dependent upon and varying with the value so agreed upon or declared, were set at rest through the exception there made of "ordinary live stock." The provisions of this amendment as to "ordinary live stock" were considered in *Express Rates, Practices, Accounts, and Revenues*, 43 I. C. C., 510; *Live Stock Classification*, 47 I. C. C., 335.

Following our findings and order in the last-cited case the eastern and southern carriers on January 1, 1918, and shortly thereafter the western carriers, adopted new forms and regulations applicable to live stock shipments by which representations as to value were required only on shipments of other than ordinary live stock.

The elimination by the second Cummins amendment of one of the main controversies between the shippers and the carriers made it advisable to reopen the investigation relative to the live stock contract for the purpose of supplementing the record already made, and for the further purpose of offering shippers and carriers an opportunity to reconcile in so far as possible other former differences. As a result of the subsequent hearings, which were coincident with a conference between the representatives of the shippers and carriers, a form of live stock contract was submitted to us on February 11, 1919, from which were eliminated many provisions theretofore objectionable to the shippers. A reprint of this form, with the shippers' remaining objections noted thereon, is annexed to this report, marked Appendix E.

It was agreed at these later hearings to eliminate from the live stock contract all reference to live poultry, and that hereafter live poultry should be transported under the merchandise or domestic form of bill of lading. No further consideration will therefore be given to the subject of live poultry.

Differences of opinion between the carriers and shippers with respect to the face of the proposed bill relate principally to the phraseology of a statement which will bring sharply and certainly to the attention of both shippers and the agents of the carriers the distinction made by the second Cummins amendment between "ordinary live stock" and "other than ordinary live stock." One suggestion was to the effect that there be a separate form of bill for each of the two kinds. In the form in Appendix F, hereinafter prescribed, we have provided two separate and distinct provisions, one of which, or both in the case of a mixed shipment, the shipper should be required to sign.

Pursuant to the suggestion of the parties provision has also been made for instances in which the live stock may be temporarily in the possession of stockyard companies.

It was agreed that "live stock" should be used throughout the bill instead of "property," and that the words "or on its own water line" should be inserted between the words "road" and "otherwise" in the third line of the agreement.

The words "shipper's load and count," in the column headed "Number and Description of Animals," should be eliminated. In suitable cases, they can readily be inserted by stamp or in writing on the billing.

The discussion of the proposed conditions of the bill was directed principally to the following features:

Section 1, paragraph 1. Proposed exemption from liability for loss, damage, or delay resulting from riots, strikes, stoppage of labor, threatened violence, or causes not due to carriers' negligence.

Section 1, paragraph 2. Proposed exemption from liability for injury or death of live stock caused by fire; and question of burden of proof as to negligence.

Section 1, paragraph 3. Exemptions claimed on account of quarantine regulations and acts of authorities.

Section 2. Agency of issuing carrier as to portion of route beyond its own road or its own water line.

Section 3, paragraph 2. Measure of carrier's liability in computing amount of any loss or damage.

Section 3, paragraph 3. Limitations of time for giving notice of and filing claims, and for institution of suits.

Section 4. Payment of charges.

Section 5. Duties required of shippers of live stock in respect of loading, unloading, care in transit, furnishing of bedding and appliances, giving notice of injury, etc.

Section 6. Water carriers' exemptions.

As shown by Appendix E, there is controversy between the carriers and the shippers regarding that portion of the separate contract with the caretaker accompanying live stock which provides: "Whenever he shall leave the caboose and pass over or along the cars or track he will do so at his own risk of personal injury, from whatever cause."

We have considered the evidence and the arguments relating to the terms of the live stock contract. It is unnecessary to set forth here the views of the respective interests represented before us. They are sufficiently indicated in Appendix E. Our own views appear as Appendix F.

We are of opinion and find that the rules and regulations contained in the live stock contracts used by the carriers respondent hereto will be unreasonable for the future in so far as they differ from the rules and regulations made by us prescribing the form of uniform live stock contract appearing as Appendix F hereto, which we find will be reasonable for the future.

GENERAL.

We have thus outlined the matters presented to us in connection with our consideration of the domestic bill of lading and the live stock contract. Our conclusions as to what will be reasonable rules and regulations for the future appear in Appendixes D and F. For a number of years this proceeding has been before us in one way or another, many hearings have been held, and elaborate arguments have been presented orally and on brief. The desirability of uniform bills of lading is acknowledged by all. Uniformity necessarily involves

subordination of some individual views to the general good. It has seemed to us advisable, without an elaborate discussion of the contentions of the parties, and of the decisions of the courts, to make rules and regulations prescribing the forms of domestic bill of lading and live stock contract which we find will be reasonable for the future.

The rules and regulations constituting the forms of bills of lading affect "the value of the service rendered to the passenger, shipper, or consignee" within the meaning of section 6 of the interstate commerce act, and must be filed with us in accordance with the provisions of that section. Certain obvious advantages accrue to the carriers through the use of uniform bills of lading approved by us. No order will be entered. In case of failure on the part of any carrier or carriers to publish and put into force and effect the rules and regulations contained in the forms of domestic bill of lading and live stock contract herein found reasonable for the future, any person aggrieved thereby has, of course, the right to file complaint as provided in the interstate commerce act attacking the particular rule or regulation which is deemed to be in violation of the act.

The bill of lading and live stock contract shown as Appendixes D and F hereof are straight bills. In printing the forms of order bills appropriate changes should be made in the portion preceding the conditions. The rules and regulations prescribing these forms are also made and should be used for the transportation of shipments to points in adjacent foreign countries, including transportation in connection with common carriers by water in foreign commerce whose vessels are registered under the laws of the United States.

CONDITIONS.

of the property herein
age thereto, except as

erty herein described
or delay caused by the
rity of law, or the act
n the weights of grain,
kage or discrepancies
sed by fire occurring
s) after notice of the
xport (if intended for
bilty shall be that of
of the carrier or party
rom such negligence
arrier or party in pos-
occurring while the
of the shipper, owner
from a defect or vice
accordance with gen-
erty, or when at the
open cars, the carrier
age by fire in which
operty had been car-
e, and the burden to
arrier or party in pos-

erty by any particular
otherwise than with
t indorsed hereon.
necessity to forward
e point of shipment
shall be from a rail to
the same as though

or delivering carrier
or, in case of export
(export) or, in case of
nine months in case
ry has elapsed: Pro-
lay or damage while
carelessness or negli-
shall be required as a
age or injury shall
er the day on which
ant that the carrier
eol, specified in the
not filed, or suits are
oing provisions, the
paid.

amage to any of said
that may have been
this shall not avoid

ooperage and baling
is to be transported
nd risk, of compress-
warding, and shall
delays in procuring
nt where there is a
therwise expressly
s) be without respect
de without respect
a lien for elevator

Sec. 4. Property not removed by the party entitled to receive it within forty-eight hours (exclusive of legal holidays) after notice of its arrival has been duly sent or given may be kept in car, depot, or place of delivery of the carrier, or warehouse, subject to a reasonable charge for storage and to carrier's responsibility as warehouseman only, or may be, at the option of the carrier, removed to and stored in a public or licensed warehouse at the cost of the owner and there held at the owner's risk and without liability on the part of the carrier, and subject to a lien for all freight and other lawful charges, including a reasonable charge for storage.

The carrier may make a reasonable charge for the detention of any vessel or car, or for the use of tracks after the car has been held forty-eight hours (exclusive of legal holidays), for loading or unloading, and may add such charge to all other charges hereunder and hold such property subject to a lien therefor. Nothing in this section shall be construed as lessening the time allowed by law or as setting aside any local rule affecting car service or storage.

Property destined to or taken from a station, wharf, or landing at which there is no regularly appointed agent shall be entirely at risk of owner after unloaded from cars or vessels or until loaded into cars or vessels, and when received from or delivered on private or other sidings, wharves, or landings shall be at owner's risk until the cars are attached to and after they are detached from trains.

Sec. 5. No carrier will carry or be liable in any way for any documents, specie, or for any articles of extraordinary value not specifically rated in the published classification or tariffs, unless a special agreement to do so and a stipulated value of the articles are indorsed hereon.

Sec. 6. Every party, whether principal or agent, shipping explosive or dangerous goods, without previous full written disclosure to the carrier of their nature, shall be liable for all loss or damage caused thereby, and such goods may be warehoused at owner's risk and expense or destroyed without compensation.

Sec. 7. The owner or consignee shall pay the freight and all other lawful charges accruing on said property, and, if required, shall pay the same before delivery. If upon inspection it is ascertained that the articles shipped are not those described in this bill of lading, the freight charges must be paid upon the articles actually shipped.

Sec. 8. Except in case of diversion from rail to water route, which is provided for in section 2 hereof, if all or any part of said property is carried by water over any part of said route, such water carriage shall be performed subject to the liabilities, limitations, and exemptions provided by statute and to the conditions contained in this bill of lading not inconsistent with such statutes or this section, and subject also to the condition that no carrier or party in possession shall be liable for any loss or damage resulting from the perils of the lakes, sea, or other waters; or from explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, machinery or appurtenances; or from collision, stranding, or other accidents of navigation, or from prolongation of the voyage. And any vessel carrying any or all of the property herein described shall have the liberty to call at intermediate ports, to tow and be towed, and assist vessels in distress, and to deviate for the purpose of saving life or property.

The term "water carriage" in this section shall not be construed as including lighterage across rivers or in lake or other harbors, and the liability for such lighterage shall be governed by the other sections of this instrument.

If the property is being carried under a tariff which provides that any carrier or carriers party thereto shall be liable for loss from perils of the sea, then as to such carrier or carriers the provisions of this section shall be modified in accordance with the provisions of the tariff, which shall be treated as incorporated into the conditions of this Bill of Lading.

Sec. 9. Any alteration, addition or erasure in this bill of lading which shall be made without an indorsement thereof hereon, signed by the agent of the carrier issuing this bill of lading, shall be without effect and this bill of lading shall be enforceable according to its original tenor.

Classification for explanation of abbreviations and characters.

APPENDIX A.

Forms of Uniform "Straight" and "Order" Bill of Lading proposed by The National Industrial Traffic League

UNIFORM STRAIGHT BILL OF LADING (To be printed on "White" Paper)
ORIGINAL—NOT NEGOTIABLE
UNIFORM ORDER BILL OF LADING (To be printed on "Yellow" Paper.)
ORIGINAL See Note.†

Company Shipper's No.
Agent's No.

RECEIVED, subject to the classifications and tariffs in effect on the date of the issue of this Bill of Lading,

at, 192

from
the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said company (which word company is to be understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its own road or its own water line, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions not prohibited by law, whether printed or written, herein contained (including conditions on back hereof) which are hereby agreed to by the shipper and accepted for himself and his assigns.

†NOTE: The following language should be inserted in the Uniform Order Bill of Lading: "The surrender of this original order bill of lading properly endorsed shall be required before the delivery of the property. Inspection of property covered by this bill of lading will not be permitted unless provided by law or unless permission is endorsed on this original bill of lading or given in writing by the shipper."

Consigned to

Destination State of County of

(Mail or street address of consignee—For purposes of notification only.)

Route

..... Car No.
(Delivering Carrier.)

No. Packages.	DESCRIPTION OF ARTICLES, SPECIAL MARKS, AND EXCEPTIONS.	WEIGHT (Subject to Correction)	CLASS RATE.	CHECK COLUMN.	
•					If this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement: The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges. (See Sec. 7 of conditions.) (Signature of consignor.)
					If charges are to prepaid, write or stamp here, "To be Prepaid."
					Received, \$ to apply in prepayment of the charges on the property described hereon. Agent or Cashier, Per (The signature here acknowledges only the amount prepaid.)

* Where the rate is dependent on value, shippers are required to state in writing the declared value of the property. Where the rate is not dependent on value, any statement of value inserted herein will be null and void.

* The declared value of the property, the rate on which is dependent on its value, is hereby stated by the shipper to be not exceeding per

Charges advanced:

\$

..... Shipper. Agent.

Per Per

Permanent post-office address of shipper

APPENDIX A

CONDITIONS

Sec. 1. (a) The carrier or party in possession of any of the property herein described shall be liable for any loss thereof or damage thereto, except as hereinafter provided.

(b) No carrier or party in possession of any of the property herein described shall be liable for any loss thereof or damage thereto or delay caused by the act of God, the public enemy, the authority of law, or the act or default of the shipper or owner, or for natural shrinkage. The carrier's liability shall be that of warehouseman, only, for loss, damage, or delay caused by fire occurring after the expiration of the free time allowed by tariffs lawfully on file (such free time to be computed as therein provided) after notice of the arrival of the property at destination or at the port of export (if intended for export) has been duly sent or given, and after placement of the property for delivery at destination, or tender of property upon consignee's order, has been made. Except in case of negligence of the carrier or party in possession (and the burden to prove freedom from such negligence shall be on the carrier or party in possession), the carrier or party in possession shall not be liable for loss, damage, or delay occurring while the property is stopped and held in transit upon the request of the shipper, owner, or party entitled to make such request, or resulting from a defect or vice in the property, or for country damage to cotton, or from delay caused by riots or strikes.

(c) In case of quarantine the property may be discharged at risk and expense of owners into quarantine depot or elsewhere, as required by quarantine regulations or authorities, or for the carrier's dispatch at nearest available point in carrier's judgment, and in any such case carrier's responsibility shall cease when property is so discharged, or property may be returned by carrier at owner's expense to shipping point, earning freight both ways. Quarantine expenses of whatever nature or kind upon or in respect to property shall be borne by the owners of the property or be a lien thereon. The carrier shall not be liable for loss or damage occasioned by fumigation or disinfection or other acts required or done by quarantine regulations or authorities, nor for detention, loss, or damage of any kind occasioned by quarantine or the enforcement thereof. No carrier shall be liable, except in case of negligence, for any mistake or inaccuracy in any information furnished by the carrier, its agents, or officers, as to quarantine laws or regulations. The shipper shall hold the carriers harmless from any expense they may incur or damages they may be required to pay by reason of the introduction of the property covered by this contract into any place against the quarantine laws or regulations in effect at such place.

Sec. 2. (a) No carrier is bound to transport said property by any particular train or vessel, or in time for any particular market or otherwise than with reasonable dispatch. Every carrier shall have the right in case of physical necessity to forward said property by any railroad or route between the point of shipment and the point of destination; but if such diversion shall be from a rail to a water route, the liability of the carrier shall be the same as though the entire carriage were by rail. In all cases not prohibited by law, where a value has been declared in writing by the shipper or has been agreed upon in writing as the released value of the property as determined by the classification or tariffs upon which the rate is based, for the purpose of securing the benefit of a lawful rate based upon value, such value so declared or agreed upon plus freight charges, if paid, shall be the maximum amount to be recovered, whether or not such loss or damage occurs from negligence.

(b) Claims for loss, damage or injury to property must be made in writing to the originating or delivering carrier or carrier issuing this bill of lading within six months after delivery of the property (or, in case of export traffic, within nine months after delivery at port of export) or, in case of failure to make delivery, then within six months (or nine months in case of export traffic) after a reasonable time for delivery has elapsed; provided, that if such loss, damage or injury to property was due to delay or damage while being loaded or unloaded or damaged in transit by carelessness or negligence, then no notice of claim nor filing of claims shall be required as a condition precedent to recovery. Suits for loss, damage or injury to property shall be instituted against the originating or delivering carrier, or carrier issuing this bill of lading not later than two years and one day after the date on which notice in writing is given by the claimant that the carrier has disallowed the claim or any part or parts thereof, specified in the notice. Where claims for loss, damage or injury to property are not filed, or suits are not instituted thereon, in accordance with the foregoing provisions, the carrier will not be liable and such claims will not be paid.

(c) Any carrier or party liable on account of loss or damage to any of said property shall have the full benefit of any insurance that may have been effected, upon or on account of said property, so far as this shall not avoid the policy or contracts of insurance: *Provided*, That the carrier reimburse the claimant for the premium paid thereon.

Sec. 3. Except where such service is required as the result of carrier's negligence, all property shall be subject to necessary coopersage and baling at owner's cost. Each carrier over whose route cotton or cotton linters is to be transported hereunder shall have the privilege, at its own cost and risk, of compressing the same for greater convenience in handling or forwarding, and shall not be held responsible for deviation or unavoidable delays in procuring such compression. Grain in bulk consigned to a point where there is a railroad, public or licensed elevator, may (unless otherwise expressly noted herein, and then if it is not promptly unloaded) be there delivered and placed with other grain of the same kind and grade without respect to ownership (and prompt notice thereof shall be given to the consignor), and if so delivered shall be subject to a lien for elevator charges in addition to all other charges hereunder.

Sec. 4. (a) Property not removed by the party entitled to receive it within the free time allowed by tariffs lawfully on file (such free time to be computed as therein provided), after notice of the arrival of the property at destination or at the port of export (if intended for export) has been duly sent or given, and after placement of the property for delivery at destination has been made, may be kept in vessel, car, depot, warehouse or place of delivery of the carrier, subject to the tariff charge for storage and to carrier's responsibility as warehouseman, only, or, at the option of the carrier, may be stored in a public or licensed warehouse, or other suitable place, at the place of delivery, at the cost of the owner, and there held, subject to the carrier's responsibility as warehouseman only, and subject to a lien for all freight and other lawful charges, including a reasonable charge for storage.

(b) Where the said property provided for in this bill of lading is lost or destroyed, resulting in non-delivery of the shipment, the carrier or party in possession shall immediately give notice thereof both to consignor and the consignee. If the property covered by this bill of lading is plainly marked with the name and address of the consignor, or if the carrier's agent at destination had otherwise specific notice thereof in writing, and such property is refused or unclaimed at destination, the carrier or party in possession thereof shall send notice of such refusal or non-claim to the consignor within such time and by such means as may, in the circumstances, be reasonable.

(c) Where nonperishable property which has been transported to destination hereunder is refused by consignee or the party entitled to receive it, or said consignee or party entitled to receive it fails to receive it when 15 days after notice of arrival shall have been duly sent or given, the carrier may sell the same at public auction to the highest bidder, at such place as may be designated by the carrier: *Provided*, That the carrier shall have first mailed, sent, or given to the consignor notice that the property has been refused or remains unclaimed, as the case may be, and that it will be subject to sale under the terms of the bill of lading if disposition be not arranged for, and shall have published notice containing a description of the property, the name of the party to whom consigned, or, if shipped order notify, the name of the party to be notified, and the time and place of sale, once a week for two successive weeks, in a newspaper of general circulation at the place of sale or nearest place where such newspaper is published: *Provided*, That 30 days shall have elapsed before publication of notice of sale after said notice that the property was refused or remains unclaimed was mailed, sent, or given.

(d) When perishable property which has been transported hereunder to destination is refused by consignee or party entitled to receive it, or said consignee or party entitled to receive it shall fail to receive it promptly, the carrier may, in its discretion, to prevent deterioration or further deterioration, sell the same to the best advantage at private or public sale: *Provided*, That if time serves for notification to the consignor or owner of the refusal of the property or the failure to receive it and request for disposition of the property, such notification shall be given, in such manner as the exercise of due diligence requires, before the property is sold.

(e) Where the procedure provided for in the two paragraphs last preceding is not possible, it is agreed that nothing contained in said paragraphs shall be construed to abridge the right of the carrier at its option to sell the property under such circumstances and in such manner as may be authorized by law.

(f) The proceeds of any sale made under this section shall be applied by the carrier to the payment of freight, demurrage, storage, and any other lawful charges and the expense of notice, advertisement, sale, and other necessary expense and of caring for and maintaining the property, if proper care of the same requires special expense, and should there be a balance it shall be paid to the owner of the property sold thereunder.

(g) Property destined to or taken from a station, wharf, or landing at which there is no regularly appointed freight agent shall be entirely at risk of owner after unloaded from cars or vessels or until loaded into cars or vessels.

Sec. 5. No carrier will carry or be liable in any way for any documents, specie or for any articles of extraordinary value not specifically rated in the published classifications or tariffs unless a special agreement to do so and a stipulated value of the articles are indorsed hereon.

Sec. 6. Every party, whether principal or agent, shipping explosives or dangerous goods, without previous full written disclosure to the carrier of their nature shall be liable for and indemnify the carrier against all loss or damage caused by such goods, and in such cases the goods may be warehoused at owner's risk and expense or destroyed without compensation.

Sec. 7. The owner or consignee shall pay the freight and average, if any, and all other lawful charges accruing on said property, and, if required, shall pay the same before delivery. The consignor shall be liable for the freight and other lawful charges, except that if the consignor stipulates, by signature, in the space provided for that purpose on the face of this bill of lading that the carrier shall not make delivery without requiring payment of such charges and the carrier, contrary to such stipulation, shall make delivery without requiring such payment, the consignor shall not be liable for such charges. Nothing herein shall limit the right of the carrier to require at time of shipment the prepayment or guarantee of the charges. Upon inspection it is ascertained that the articles shipped are not those described in this bill of lading, the freight charges must be paid upon the articles actually shipped.

Sec. 8. If this bill of lading is issued on the order of the shipper, or his agent, in exchange or in substitution for another bill of lading, the shipper's signature to the prior bill of lading as to the statement of value or otherwise, or decision of common law or bill of lading liability, in or in connection with such prior bill of lading, shall be considered a part of this bill of lading as fully as if the same were written or made in or in connection with this bill of lading.

Sec. 9. The transportation of any property under the terms of this bill, by lighter, car float, or car ferry, in or across rivers, harbors or lakes, shall be deemed to be transportation by rail.

Sec. 10. Any alteration, addition, or erasure in this bill of lading which shall be made without an indorsement thereof hereon, signed by the agent of the carrier issuing this bill of lading, shall be without effect, and this bill of lading shall be enforceable according to its original tenor.

[illegible]

No carrier or party in possession of any of the property shall be liable for any loss thereof or damage thereto by act of God, the public enemy, quarantine, the seizure of the property or default of the shipper or owner, or for difference in price of seed, or other commodities caused by natural causes, or in elevator weights. For loss, damage, or delay occurring after forty-eight hours (exclusive of legal holidays) from the arrival of the property at destination or at port of destination (for export) has been duly sent or given, the carrier or warehouseman only. Except in case of negligence of the carrier or party in possession (and the burden to prove freedom from negligence shall be on the carrier or party in possession), the carrier or party in possession shall not be liable for loss, damage, or delay if the property is stopped and held in transit upon request of the shipper or party entitled to make such request; or result of riot or strike in the property or from riots or strikes. When the property is held in transit upon request of the shipper or party in possession (except in case of loss or damage caused by negligence of the carrier or party in possession) the liability shall be the same as though the property were in closed cars shall be liable only for negligence. The carrier or party in possession shall be liable for loss or damage proved to have resulted from such negligence shall be on the carrier or party in possession.

Claims must be made in writing to the originator within six months after delivery of the property, within nine months after delivery at port of destination, and within six months after failure to make delivery, then within six months of export (traffic) after a reasonable time for delivery. The carrier must be notified in writing provided that if the loss, damage or injury was due to the property being loaded or unloaded, or damaged in transit, the carrier must be notified in writing immediately upon discovery of the loss, damage or injury, then no notice of claim nor filing of claim is necessary if the carrier has disallowed the claim or any part or parts thereof. Where claims for loss, damage or delay are not instituted thereon, in accordance with the provisions of the bill of lading, the carrier will not be liable and such claims will not be considered.

Sec. 3. All property shall be subject to necessity at owner's cost. Each carrier over whose route hereunder shall have the privilege, at its own cost, of using the same for greater convenience in handling, but shall not be held responsible for deviation or unvoiding such compression. Grain in bulk consigned to railroad, public or licensed elevator, may (unless noted herein, and then it is not promptly unloaded and placed with other grain of the same kind and quality) be sold by the carrier, and the proceeds thereof to ownership, and if so delivered shall be subject to the same charges as other grain. The carrier shall be liable in addition to all other charges hereunder for any loss or damage to the grain.

are not filed, or suits are not instituted thereon, in a
 (c) Any carrier or party liable on account of loss or da-
 account of said property, so far as this shall not avoid
 thereon.
 Sec. 3. Except where such service is required as the re-
 carrier over whose route cotton or cotton linters is to be
 convenience in handling or forwarding, and shall not be
 a point where there is a railroad, public or licensed eleva-
 and placed with other grain of the same kind and grade
 shall be subject to a lien for elevator charges in addition to
 Sec. 4. (a) Property not removed by the party entitled
 provided, after notice of the arrival of the property at desti-
 and to carrier's responsibility as warehouseman, only, or at
 of delivery, at the cost of the owner, and there held, subje-
 charges, including a reasonable charge for storage.
 (b) Where the said property provided for in this bill
 station shall immediately give notice thereof both to consi-
 at destination, the consignee, or if the carrier's agent at
 may, in the circumstances, be reasonable.
 (c) Where nonperishable property which has been trans-
 or party entitled to receive it fails to receive it when 15 days
 the highest bidder, at such place as may be designated by
 property has been refused or remains unclaimed, as the case
 for, and shall have published notice containing a description
 to be notified, and the time and place of sale, once a week
 newspaper is published. *Provided*, That 30 days shall have el-
 was mailed, sent, or given.
 (d) When perishable property which has been transported
 entitled to receive it shall fail to receive it promptly, the carrier
 at private or public sale: *Provided*, That if time serves for
 disposition of the property, such notification shall be given, it
 (e) Where the procedure provided for in the two paragraphs
 to abridge the right of the carrier at its option to sell the prop-
 (f) The proceeds of any sale made under this section shall
 the expense of notice, advertisement, sale, and other necessary
 and should there be a balance it shall be paid to the owner of
 (g) Property destined to or taken from a station, wharf
 unloaded from cars or vessels or until loaded into cars or ves-
 Sec. 5. No carrier will carry or be liable in any way for any
 tions or lands unless a special agreement to do so and a stipula-
 Sec. 6. Every party, whether principal or agent, shipping
 be liable for and indemnify the carrier against all loss or da-
 destroyed without compensation.
 Sec. 7. The owner or consignee shall pay the freight and a
 before delivery. The consignee shall be liable for the freight and
 purpose on the face of this bill of lading that the carrier shall
 shall make delivery without requiring such payment, the consi-
 time of shipment the prepayment or guarantee of the charges,
 the freight charges must be paid upon the articles actually shipped.
 Sec. 8. If this bill of lading is issued on the order of the ship-
 prior bill of lading as to the statement of value or otherwise, or
 be considered a part of this bill of lading as fully as if the same
 Sec. 9. The transportation of any property under the
 deemed to be transportation by rail.
 Sec. 10. Any alteration, addition, or erasure in this bill of lad-

pt as hereinafter provided,
 used by the act of God, the
 rehouseman, only, for loss,
 l as therein provided) after
 cement of the property for
 on (and the burden to proof
 or delay occurring while
 defect or vice in the prop-

7 quarantine regulations or
 cease when property is so
 whatever nature or kind
 occasioned by fumiga-
 ioned by quarantine or the
 y the carrier, its agents, or
 ay be required to pay by
 ace.

wise than with reasonable
 of shipment and the point
 rriage were by rail. In all
 ue of the property as deter-
 ie, such value so declared
 in negligence.

this bill of lading within
 failure to make delivery,
 uch loss, damage or injury
 notice of claim nor filing
 against the originator or
 is given by the carrier to

SUPPLEMENT NO. 11 TO CONSOLIDATED FREIGHT CLASSIFICATION NUMBER 1
Publishing the Ratings, Rules and Regulations of the Official, Southern and Western Classifications

"Uniform Bill of Lading—Adopted by carriers in Official and Western Classification Territories."

COMPANY

Shipper's No.....

Agent's No

RECEIVED, subject to the classifications and tariffs in effect on the date of issue of this Original Bill of Lading.

.....the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said company agrees to carry to its usual place of delivery at said destination, if on its road, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained (including conditions on back hereof) and which are agreed to by the shipper and accepted for himself and his assigns.

The Rate of Freight from

to is in Cents per 100 Lbs.

[illegible]

(Mail Address—Not for purposes of Delivery.)

Consigned to

Destination State of County of

Route Car Initial Car No.

[illegible]

..... Shipper. Agent.

Per Per

(This Bill of Lading is to be signed by the shipper and agent of the carrier issuing same.)

APPENDIX B.

SUPPLEMENT No. 11 TO CONSOLIDATED FREIGHT CLASSIFICATION NUMBER 1

Publishing the Ratings, Rules and Regulations of the Official, Southern and Western Classifications

CONDITIONS.

Sec. 1. The carrier or party in possession of any of the property herein described shall be liable for any loss thereof or damage thereto, except as hereinafter provided.

No carrier or party in possession of any of the property herein described shall be liable for any loss thereof or damage thereto or delay caused by the act of God, the public enemy, quarantine, the authority of law, or the act or default of the shipper or owner, or for differences in the weights of grain, seed, or other commodities caused by natural shrinkage or discrepancies in elevator weights. For loss, damage, or delay caused by fire occurring after forty-eight hours (exclusive of legal holidays) after notice of the arrival of the property at destination or at port of export (if intended for export) has been duly sent or given, the carrier's liability shall be that of warehouseman only. Except in case of negligence of the carrier or party in possession (and the burden to prove freedom from such negligence shall be on the carrier or party in possession), the carrier or party in possession shall not be liable for loss, damage, or delay occurring while the property is stopped and held in transit upon request of the shipper, owner or party entitled to make such request, or resulting from a defect or vice in the property or from riots or strikes. When in accordance with general custom, on account of the nature of the property, or when at the request of the shipper the property is transported in open cars, the carrier or party in possession (except in case of loss or damage by fire in which case the liability shall be the same as though the property had been carried in closed cars) shall be liable only for negligence, and the burden to prove freedom from such negligence shall be on the carrier or party in possession.

Sec. 2. No carrier is bound to transport said property by any particular train or vessel, or in time for any particular market, or otherwise than with reasonable despatch, unless by specific agreement indorsed hereon. Every carrier shall have the right in case of physical necessity to forward said property by any railroad or route between the point of shipment and the point of destination; but if such diversion shall be from a rail to a water route the liability of the carrier shall be the same as though the entire carriage were by rail.

Claims must be made in writing to the originating or delivering carrier within six months after delivery of the property (or, in case of export traffic, within nine months after delivery at port of export) or, in case of failure to make delivery, then within six months (or nine months in case of export traffic) after a reasonable time for delivery has elapsed: Provided that if the loss, damage or injury was due to delay or damage while being loaded or unloaded, or damaged in transit by carelessness or negligence, then no notice or claim nor filing of claims shall be required as a condition precedent to recovery. Suits for loss, damage or injury shall be instituted not later than two years and one day after the day on which notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof, specified in the notice. Where claims for loss, damage or delay are not filed, or suits are not instituted thereon, in accordance with the foregoing provisions, the carrier will not be liable and such claims will not be paid.

Any carrier or party liable on account of loss of or damage to any of said property shall have the full benefit of any insurance that may have been effected upon or on account of said property, so far as this shall not avoid the policies or contracts of insurance.

Sec. 3. All property shall be subject to necessary coeprage and baling at owner's cost. Each carrier over whose route cotton is to be transported hereunder shall have the privilege, at its own cost and risk, of compressing the same for greater convenience in handling or forwarding, and shall not be held responsible for deviation or unavoidable delays in procuring such compression. Grain in bulk consigned to a point where there is a railroad, public or licensed elevator, may (unless otherwise expressly noted herein, and then it is not promptly unloaded) be there delivered and placed with other grain of the same kind and grade without respect to ownership, and if so delivered shall be subject to a lien for elevator charges in addition to all other charges hereunder.

Sec. 4. Property not removed by the party entitled to receive it within forty-eight hours (exclusive of legal holidays) after notice of its arrival has been duly sent or given may be kept in car, depot, or place of delivery of the carrier, or warehouse, subject to a reasonable charge for storage and to carrier's responsibility as warehouseman only, or may be, at the option of the carrier, removed to and stored in a public or licensed warehouse at the cost of the owner and there held at the owner's risk and without liability on the part of the carrier, and subject to a lien for all freight and other lawful charges, including a reasonable charge for storage.

The carrier may make a reasonable charge for the detention of any vessel or car, or for the use of tracks after the car has been held forty-eight hours (exclusive of legal holidays), for loading or unloading, and may add such charge to all other charges hereunder and hold such property subject to a lien therefor. Nothing in this section shall be construed as lessening the time allowed by law or as setting aside any local rule affecting car service or storage.

Property destined to or taken from a station, wharf, or landing at which there is no regularly appointed agent shall be entirely at risk of owner after unloaded from cars or vessels or until loaded into cars or vessels, and when received from or delivered on private or other sidings, wharves, or landings shall be at owner's risk until the cars are attached to and after they are detached from trains.

Sec. 5. No carrier will carry or be liable in any way for any documents, specie, or for any articles of extraordinary value not specifically rated in the published classification or tariffs, unless a special agreement to do so and a stipulated value of the articles are indorsed hereon.

Sec. 6. Every party, whether principal or agent, shipping explosive or dangerous goods, without previous full written disclosure to the carrier of their nature, shall be liable for all loss or damage caused thereby, and such goods may be warehoused at owner's risk and expense or destroyed without compensation.

Sec. 7. The owner or consignee shall pay the freight and all other lawful charges accruing on said property, and, if required, shall pay the same before delivery. If upon inspection it is ascertained that the articles shipped are not those described in this bill of lading, the freight charges must be paid upon the articles actually shipped.

Sec. 8. Except in case of diversion from rail to water route, which is provided for in section 2 hereof, if all or any part of said property is carried by water over any part of said route, such water carriage shall be performed subject to the liabilities, limitations, and exemptions provided by statute and to the conditions contained in this bill of lading not inconsistent with such statutes or this section, and subject also to the condition that no carrier or party in possession shall be liable for any loss or damage resulting from the perils of the lakes, sea, or other waters; or from explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, machinery or appurtenances; or from collision, stranding, or other accidents of navigation, or from prolongation of the voyage. And any vessel carrying any or all of the property herein described shall have the liberty to call at intermediate ports, to tow and be towed, and assist vessels in distress, and to deviate for the purpose of saving life or property.

The term "water carriage" in this section shall not be construed as including lightage across rivers or in lake or other harbors, and the liability for such lightage shall be governed by the other sections of this instrument.

If the property is being carried under a tariff which provides that any carrier or carriers party thereto shall be liable for loss from perils of the sea, then as to such carrier or carriers the provisions of this section shall be modified in accordance with the provisions of the tariff, which shall be treated as incorporated into the conditions of this Bill of Lading.

Sec. 9. Any alteration, addition or erasure in this bill of lading which shall be made without an indorsement thereof hereon, signed by the agent of the carrier issuing this bill of lading, shall be without effect, and this bill of lading shall be enforceable according to its original tenor.

with the foregoing provisions, the carrier will not be liable and such claims will not be paid.

of said property shall have the full benefit of any insurance that may have been effected, upon terms and contracts of insurance: *Provided*, That the carrier reimburse the claimant for the premium paid

er's negligence, all property shall be subject to necessary co-operation and holding at owner's cost. Each

ed hereunder shall have the privilege, at its own cost and risk, of compressing the same for greater

ible for deviation or unavoidable delays in procuring such compression. Train in bulk consignment to

misses otherwise expressly noted herein, and then if it is not promptly unloaded, be there delivered

pect to ownership) (and prompt notice thereof shall be given to the consignee), and if so delivered

er's responsibility as warehouseman only, and subject to a lien for all freight and other lawful

of the carrier, may be stored in a public or licensed warehouse, or other suitable place, at the place

essel, car, depot, warehouse or place of delivery of the carrier, subject to the tariff charge for storage

on at the port of export (if intended for export) has been duly sent or given, and after placement of the

o it within the free time allowed by tariff lawfully on file (such free time to be computed as therean

arges hereunder.

to destination hereunder is refused by consignee or the party entitled to receive it, or said consignee

notice of arrival shall have been duly sent or given, the carrier may sell the same at public auction to

er: *Provided*, That the carrier shall have first mailed, sent, or given to the consignee notice that the

and that it will be subject to sale under the terms of the bill of lading if disposition be not arranged

property, the name of the party to whom consigned, or if shipped order notify, the name of the party

cessive weeks, in a newspaper of general circulation at the place of sale or nearest place where such

ore publication of notice of sale after said notice that the property was refused or remains unclaimed

under to destination is refused by consignee or party entitled to receive it, or said consignee or party

in its discretion, to prevent deterioration or further deterioration, sell the same to the best advantage

anner as the exercise of due diligence requires, before the property is sold.

proceeding is not possible, it is agreed that nothing contained in said paragraphs shall be construed

plied by the carrier to the payment of freight, demurrage, storage, and any other lawful charges and

erty sold thereunder.

ding at which there is no regularly appointed freight agent shall be entirely at risk of owner after

ents, specie or for any articles of extraordinary value not specifically rated in the published classifica-

line of the articles are endorsed hereon.

used by such goods, and in such cases the goods may be warehoused at owner's risk and expense or

it any, and all other lawful charges accruing on said property, and, if required, shall pay the same

her lawful charges, except that if the consignee stipulates, by signature, in the space provided for that

shall not be liable for such charges. Nothing herein shall limit the right of the carrier to require at

on inspection it is ascertained that the articles shipped are not those described in this bill of lading,

or his agent, in exchange or in substitution for another bill of lading, the shipper's signature to the

tion of common law or bill of lading liability, in or in connection with such prior bill of lading, shall

ritten or made in or in connection with this bill of lading.

s of this bill, by lighter, car float, or car ferry, in or across rivers, harbors or lakes, shall be

which shall be made without an indorsement thereof hereon, signed by the agent of the carrier issuing

be enforceable according to its original tenor.

APPENDIX C.

SEC. 9. Except in case of diversion from rail to water route, which is provided for in section 3 hereof, if all or any part of said property is carried by water over any part of said route, such water carriage shall be performed subject to the liabilities, limitations, and exemptions provided by statute and to the conditions contained in this bill of lading not inconsistent with such statute or this section, and subject also to the condition that no such carrier or party in possession shall be liable for any loss or damage resulting from fire, or for any loss or damage resulting from the perils of the lakes, sea, or other waters; or from vermin, leakage, chafing, breakage, heat, frost, wet, explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, machinery, or appurtenances, whether existing prior to, at the time of, or after sailing; or unseaworthiness; or from collision, stranding, or other accidents of navigation, or from prolongation of the voyage. And any vessel carrying any or all of the property herein described shall have the liberty to call at any port or ports, to tow and to be towed, to transfer, to transship, to lighter, to load and discharge goods at any time, and assist vessels in distress, and to deviate for the purpose of saving life or property. Such water carrier shall not be responsible for any loss or damage to property if it be necessary or is usual to carry such property upon deck.

If the shipowner shall have complied with the provisions of section 3 of the Harter Act, it is hereby agreed that the owners or consignees of the cargo shall contribute with the shipowner in general average, and shall pay any salvage or special charges incurred, even though the necessity for the sacrifice or expenditure was brought about by the fault in navigation or management of the ship.

If the property is being carried under a tariff which provides that any carrier or carriers party thereto shall be liable for loss from perils of the sea, then as to such carrier or carriers the provisions of this section shall be modified in accordance with the provisions of the tariff, which shall be treated as incorporated into the conditions of this bill of lading.

The term "water carriage" in this section shall not be construed as including lighterage in or across rivers, lakes, or other harbors when performed by or on behalf of the rail carrier, and the liability for such lighterage shall be governed by the other sections of this instrument.

and grade without respect to ownership (and prompt notice thereof shall be given) and other charges hereunder.

the same kind
of the same kind
there is a railroad
on

load the live stock into and out of cars, except in those instances where this duty is made obligatory upon any person shall accompany the live stock in charge of same, he shall take care of, feed and water the live stock and whenever such person shall open or close any door or opening in the car or cars, or the pens or compartments as to prevent the escape therefrom of any of the live stock. In the transportation of live stock are required they shall be furnished by the shipper at his own expense by adequately strong partitions and such stock shall be at the risk of the shipper as to any damage result from or mingled with other live stock the shipper, owner, consignee or agent thereof shall inform in writing the carrier any part of said route, such water carriage shall be performed subject to all the terms and provisions of the act of the United States, approved on February 13, 1893, and entitled "An act relating to the navigation of the coast by water the protection of limited liability, and to the conditions contained in this bill of lading not inconsistent with the provisions of any fire happening to or on board the vessel, or from explosion, bursting of boilers or breakage of machinery in all respects seaworthy and properly manned, equipped, and supplied, no such carrier shall be liable for loss or damage to the cargo, or from latent defects in hull, machinery, or appurtenances, whether existing prior to, at the time of shipment, or from prolongation of the voyage. And, when for any reason it is necessary, any vessel carrying cargo to or from any port or ports, in or out of the customary route, to tow and be towed, to transfer, transship, or lighter, to load or unload for the purpose of saving life or property, and for docking and repairs. Except in case of negligence, the carrier shall be necessary or is usual to carry the same upon deck. In 1890, and, as to any matter not therein provided for, according to the law and usage of the port of New York, in all respects seaworthy and properly manned, equipped and supplied, it is hereby agreed that in case of loss or in the management of the vessel, or from any latent or other defects in the vessel, her machinery or equipment or at the beginning of the voyage (provided the latent or other defects or the unseaworthiness of the vessel and/or owners of the cargo shall nevertheless pay salvage and any special charges incurred in respect to the cargo) the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred by the carrier or carriers party thereto shall be liable for loss from perils of the sea, then as to such carrier the tariff provisions, which shall be regarded as incorporated into the conditions of this bill of lading. Including lighterage in or across rivers, harbors, or lakes, when performed by or on behalf of rail carriers. This bill of lading shall be made without an indorsement thereof hereon, signed by the agent of the carrier issuing this agreement to its original tenor.

MAN OR MEN IN CHARGE OF LIVE STOCK

For vessel in charge of the live stock mentioned in the within contract, whether with or without charge of the cargo, the carrier assumes all risk of accident or damage to his person or property, and hereby releases and discharges each and every person from all account of any personal injury or damage of any kind sustained by him, unless caused by the negligence of the carrier. The carrier shall leave the caboose and pass over or along the cars or track he will do so at his own risk of personal injury, and that no carrier shall be required to stop or start its train or caboose cars at or from the depot

..... Station, 19—
.....
.....
.....
.....
.....
(Signature of man or men in charge.)

Shipper's No.

Agent's No.

Company

at....., 192

(Mail or street address of consignee—For purposes of notification only.)

Destination..... State of..... County of.....

Route.....

..... (Delivering carrier.) Car Initial..... Car No.

No. Packages	DESCRIPTION OF ARTICLES, SPECIAL MARKS, AND EXCEPTIONS	* WEIGHT (Subject to Correction)	CLASS OR RATE	CHECK COLUMN
				<p>If this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:</p> <p>The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges. (See section 7 of conditions.)</p> <p>(Signature of consignor.)</p>
				<p>If charges are to be prepaid, write or stamp here, "To be Prepaid."</p>
				<p>Received \$.....</p> <p>to apply in prepayment of the charges on the property described hereon.</p>
				<p>Agent or Cashier,</p>
				<p>Per.....</p> <p>(The signature here acknowledges only the amount prepaid.)</p>

* If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight."

NOTE.—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.

The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding \$..... per.....

..... Shipper. Agent.

Per Per

Permanent post-office address of shipper.

APPENDIX D.

CONTRACT TERMS AND CONDITIONS.

SEC. 1. (a) The carrier or party in possession of any of the property herein described shall be liable as at common law for any loss thereof or damage thereto, except as hereinafter provided.

(b) No carrier or party in possession of all or any of the property herein described shall be liable for any loss thereof or damage thereto or delay caused by the act of God, the public enemy, the authority of law, or the act or default of the shipper or owner, or for natural shrinkage. The carrier's liability shall be that of warehouseman, only, for loss, damage, or delay caused by fire occurring after the expiration of the free time allowed by tariffs lawfully on file (such free time to be computed as therein provided) after notice of the arrival of the property at destination or at the port of export (if intended for export) has been duly sent or given, and after placement of the property for delivery at destination, or tender of delivery of the property to the party entitled to receive it, has been made. Except in case of negligence of the carrier or party in possession (and the burden to prove freedom from such negligence shall be on the carrier or party in possession), the carrier or party in possession shall not be liable for loss, damage, or delay occurring while the property is stopped and held in transit upon the request of the shipper, owner, or party entitled to make such request, or resulting from a defect or vice in the property, or for country damage to cotton, or from riots or strikes.

(c) In case of quarantine the property may be discharged at risk and expense of owners into quarantine depot or elsewhere, as required by quarantine regulations or authorities, or for the carrier's dispatch at nearest available point in carrier's judgment, and in any such case carrier's responsibility shall cease when property is so discharged, or property may be returned by carrier at owner's expense to shipping point, earning freight both ways. Quarantine expenses of whatever nature or kind upon or in respect to property shall be borne by the owners of the property or be a lien thereon. The carrier shall not be liable for loss or damage occasioned by fumigation or disinfection or other acts required or done by quarantine regulations or authorities even though the same may have been done by carrier's officers, agents, or employees, nor for detention, loss, or damage of any kind occasioned by quarantine or the enforcement thereof. No carrier shall be liable, except in case of negligence, for any mistake for inaccuracy in any information furnished by the carrier, its agents, or officers, as to quarantine laws or regulations. The shipper shall hold the carriers harmless from any expense they may incur, or damages they may be required to pay, by reason of the introduction of the property covered by this contract into any place against the quarantine laws or regulations in effect at such place.

SEC. 2. (a) No carrier is bound to transport said property by any particular train or vessel, or in time for any particular market or otherwise than with reasonable dispatch. Every carrier shall have the right in case of physical necessity to forward said property by any carrier or route between the point of shipment and the point of destination. In all cases not prohibited by law, where a lower value than actual value has been represented in writing by the shipper or has been agreed upon in writing as the released value of the property as determined by the classification or tariffs upon which the rate is based, such lower value plus freight charges if paid shall be the maximum amount to be recovered, whether or not such loss or damage occurs from negligence.

(b) Claims for loss, damage, or injury to property must be made in writing to the originating or delivering carrier or carriers issuing this bill of lading within six months after delivery of the property (or, in case of export traffic, within nine months after delivery at port of export) or, in case of failure to make delivery, then within six months (or nine months in case of export traffic) after a reasonable time for delivery has elapsed; provided that if such loss, damage, or injury was due to delay or damage while being loaded or unloaded, or damaged in transit by carelessness or negligence, then no notice of claim nor filing of claim shall be required as a condition precedent to recovery. Suits for loss, damage, injury, or delay shall be instituted only within two years and one day after delivery of the property, or in case of failure to make delivery, then within two years and one day after a reasonable time for delivery has elapsed: *Provided*, That in case the claim on which suit is based was made in writing within six months, or nine months in case of export traffic (whether or not filing of such claim is required as a condition precedent to recovery), suit shall be instituted not later than two years and one day after notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof specified in the notice.

(c) Any carrier or party liable on account of loss of or damage to any of said property shall have the full benefit of any insurance that may have been effected upon or on account of said property, so far as this shall not avoid the policies or contracts of insurance: *Provided*, That the carrier reimburse the claimant for the premium paid thereon.

SEC. 3. Except where such service is required as the result of carrier's negligence, all property shall be subject to necessary co-operation and baling at owner's cost. Each carrier over whose route cotton or cotton linters is to be transported hereunder shall have the privilege, at its own cost and risk, of compressing the same for greater convenience in handling or forwarding, and shall not be held responsible for deviation or unavoidable delays in procuring such compression. Grain in bulk consigned to a point where there is a railroad, public or licensed elevator, may (unless otherwise expressly noted herein, and then if it is not promptly unloaded) be there delivered and placed with other grain of the same kind and grade without respect to ownership (and prompt notice thereof shall be given to the consignor), and if so delivered shall be subject to a lien for elevator charges in addition to all other charges hereunder.

SEC. 4. (a) Property not removed by the party entitled to receive it within the free time allowed by tariffs, lawfully on file (such free time to be computed as therein provided), after notice of the arrival of the property at destination or at the port of export (if intended for export) has been duly sent or given, and after placement of the property for delivery at destination has been made, may be kept in vessel, car, depot, warehouse or place of delivery of the carrier, subject to the tariff charge for storage and to carrier's responsibility as warehouseman, only, or at the option of the carrier, may be removed to and stored in a public or licensed warehouse at the place of delivery or other available place, at the cost of the owner, and there held without liability on the part of the carrier, and subject to a lien for all freight and other lawful charges, including a reasonable charge for storage.

(b) Where nonperishable property which has been transported to destination hereunder is refused by consignee or the party entitled to receive it, or said consignee or party entitled to receive it fails to receive it within 15 days after notice of arrival shall have been duly sent or given, the carrier may sell the same at public auction to the highest bidder, at such places as may be designated by the carrier: *Provided*, That the carrier shall have first mailed, sent, or given to the consignor notice that the property has been refused or remains unclaimed, as the case may be, and that it will be subject to sale under the terms of the bill of lading if disposition be not arranged for, and shall have published notice containing a description of the property, the name of the party to whom consigned, or, if shipped order notify, the name of the party to be notified, and the time and place of sale, once a week for two successive weeks, in a newspaper of general circulation at the place of sale or nearest place where such newspaper is published: *Provided*, That 30 days shall have elapsed before publication of notice of sale after said notice that the property was refused or remains unclaimed was mailed, sent, or given.

(c) Where perishable property which has been transported hereunder to destination is refused by consignee or party entitled to receive it, or said consignee or party entitled to receive it shall fail to receive it promptly, the carrier may, in its discretion, to prevent deterioration or further deterioration, sell the same to the best advantage at private or public sale: *Provided*, That if time serves for notification to the consignor or owner of the refusal of the property or the failure to receive it and request for disposition of the property, such notification shall be given, in such manner as the exercise of due diligence requires, before the property is sold.

(d) Where the procedure provided for in the two paragraphs last preceding is not possible, it is agreed that nothing contained in said paragraphs shall be construed to abridge the right of the carrier at its option to sell the property under such circumstances and in such manner as may be authorized by law.

(e) The proceeds of any sale made under this section shall be applied by the carrier to the payment of freight, demurrage, storage, and any other lawful charges and the expense of notice, advertisement, sale, and other necessary expense and of caring for and maintaining the property, if proper care of the same requires special expense, and should there be a balance it shall be paid to the owner of the property sold hereunder.

(f) Property destined to or taken from a station, wharf, or landing at which there is no regularly appointed freight agent shall be entirely at risk of owner after unloaded from cars or vessels or until loaded into cars or vessels, and, except in case of carrier's negligence, when received from or delivered to such stations, wharves, or landings shall be at owner's risk until the cars are attached to and after they are detached from locomotive or train or until loaded into and after unloaded from vessels.

SEC. 5. No carrier hereunder will carry or be liable in any way for any documents, specie, or for any articles of extraordinary value not specifically rated in the published classifications or tariffs unless a special agreement to do so and a stipulated value of the articles are indorsed hereon.

SEC. 6. Every party, whether principal or agent, shipping explosives or dangerous goods, without previous full written disclosure to the carrier of their nature, shall be liable for and indemnify the carrier against all loss or damage caused by such goods, and such goods may be warehoused at owner's risk and expense or destroyed without compensation.

SEC. 7. Except in those instances where it may lawfully be authorized to do so, no carrier by railroad shall deliver or relinquish possession at destination of the property covered by this bill of lading until all tariff rates and charges thereon have been paid. The consignor shall be liable for the freight and all other lawful charges, except that if the consignor stipulates, by signature, in the space provided for that purpose on the face of this bill of lading that the carrier shall not make delivery without requiring payment of such charges and the carrier, contrary to such stipulation, shall make delivery without requiring such payment, the consignor shall not be liable for such charges. Nothing herein shall limit the right of the carrier to require at time of shipment the prepayment or guarantee of the charges. If upon inspection it is ascertained that the articles shipped are not those described in this bill of lading, the freight charges must be paid upon the articles actually shipped.

SEC. 8. If this bill of lading is issued on the order of the shipper, or his agent, in exchange or in substitution for another bill of lading, the shipper's signature to the prior bill of lading as to the statement of value or otherwise, or election of common law or bill of lading liability, in or in connection with such prior bill of lading, shall be considered a part of this bill of lading as fully as if the same were written or made in or in connection with this bill of lading.

SEC. 9. (a) If all or any part of said property is carried by water over any part of said route, such water carriage shall be performed subject to all the terms and provisions of, and all the exemptions from liability contained in, the Act of the Congress of the United States, approved on February 13, 1893, and entitled "An act relating to the navigation of vessels, etc.," and of other statutes of the United States according carriers by water the protection of limited liability, and to the conditions contained in this bill of lading not inconsistent therewith or with this section.

(b) No such carrier by water shall be liable for any loss or damage resulting from any fire happening to or on board the vessel, or from explosion, bursting of boilers or breakage of shafts, unless caused by the design or neglect of such carrier.

(c) If the owner shall have exercised due diligence in making the vessel in all respects seaworthy and properly manned, equipped, and supplied, no such carrier shall be liable for any loss or damage resulting from the perils of the lakes, seas, or other waters, or from latent defects in hull, machinery, or appurtenances whether existing prior to, at the time of, or after sailing, or from collision, stranding, or other accidents of navigation, or from prolongation of the voyage. And, when for any reason it is necessary, any vessel carrying any or all of the property herein described shall be at liberty to call at any port or ports, in or out of the customary route, to tow and to be towed, to transfer, transship, or lighter, to load and discharge goods at any time, to assist vessels in distress, to deviate for the purpose of saving life or property, and for docking and repairs. Except in case of negligence such carrier shall not be responsible for any loss or damage to property if it be necessary or is usual to carry the same upon deck.

(d) General average shall be payable according to York-Antwerp Rules, 1890, and, as to any matter not therein provided for, according to the law and usage of the port of New York. If the owners shall have exercised due diligence to make the vessel in all respects seaworthy and properly manned, equipped and supplied, it is hereby agreed that in case of danger, damage or disaster resulting from faults or errors in navigation, or in the management of the vessel, or from any latent or other defects in the vessel, her machinery or appurtenances, or from unseaworthiness, whether existing at the time of shipment or at the beginning of the voyage (provided the latent or other defects or the unseaworthiness was not discoverable by the exercise of due diligence), the shippers, consignees and/or owners of the cargo shall nevertheless pay salvage and any special charges incurred in respect of the cargo, and shall contribute with the shipowner in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred for the common benefit or to relieve the adventure from any common peril.

(e) If the property is being carried under a tariff which provides that any carrier or carriers party thereto shall be liable for loss from perils of the sea, then as to such carrier or carriers the provisions of this section shall be modified in accordance with the tariff provisions, which shall be regarded as incorporated into the conditions of this bill of lading.

(f) The term "water carriage" in this section shall not be construed as including lighterage in or across rivers, harbors, or lakes, when performed by or on behalf of rail carriers. SEC. 10. Any alteration, addition, or erasure in this bill of lading which shall be made without the special notation hereon of the agent of the carrier issuing this bill of lading, shall be without effect, and this bill of lading shall be enforceable according to its original tenor.

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FORM PROPOSED BY REPRESENTATIVES OF CARRIERS AND SHIPPERS
IN CONFERENCE AT CHICAGO, ILL., FEBRUARY 11, 1919.

Shippers' proposals indicated in
black-faced type

This form of contract to be used for shipments of Live Stock and Wild Animals instead of Uniform Bill of Lading

COMPANY

UNIFORM LIVE STOCK CONTRACT.—DUPLICATE ORIGINAL.—NOT NEGOTIABLE

STATION, _____, 19____

THIS AGREEMENT, made this day of, 191..., by and between the

COMPANY.

party of the first part, hereinafter called the carrier, and.

..(Shipper's name)

party of the second part, hereinafter called the shipper:

WHEREAS, The classifications and tariffs under which this agreement is made require that, for the purpose of applying the lawful rate of freight, the shipper must declare the shipment to be "Ordinary Live Stock," specifying the kind or kinds of animals, or if not "Ordinary Live Stock" he must declare the kind and value of each animal, space for such declaration being provided below:

Now, THEREFORE, THIS AGREEMENT WITNESSETH, That the carrier has received from the shipper, subject to the classifications and tariffs in effect on the date of issue of this agreement, the live stock described below, in apparent good order, except as noted, consigned and destined as indicated below, which the carrier agrees to carry to its usual place of delivery at said destination, if on its road, otherwise to delivery to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said live stock over all or any portion of said route to destination, and as to each party at any time interested in all or any of said live stock, that every service to be performed and every liability incurred in connection with said shipment shall be subject to all the conditions, whether printed or written, herein contained (including conditions on back hereof) and which are agreed to by the shipper and accepted for himself and his assigns.

SEPARATE PROPOSAL OF THE NATIONAL LIVE STOCK EXCHANGE.

(a) To insert the words "or on its own water line" between the words "road" and "otherwise" in the first sentence, third line. (b) To insert the words "not prohibited by law" between the words "conditions" and "whether" in the second sentence, sixth line.

Consigned to.

Destination _____, State of _____, County of _____.

Route..

Car Initials and Numbers.

Ordinary live stock means all cattle, swine, sheep, goats, horses, or mules, except such as are chiefly valuable for breeding, racing, show purposes, or other special uses. Different rates of freight are in effect on live stock chiefly valuable for breeding, racing, show, or other special uses, depending on the value placed thereon by the shipper, and there will be no liability in rate even for any amount in excess of such valuation of such live stock. To secure the lowest freight rate, the shipper may declare the animals at the value prescribed in the classification as the basic value, or he may declare any higher value, not to exceed actual value, in which event the freight rate will be higher by 2 per cent of the rate for each 50 per cent, or fraction thereof, by which the value so declared exceeds the basic value as prescribed in the tariffs.

SEPARATE PROPOSAL OF THE NATIONAL LIVE STOCK EXCHANGE.

STOCK EXCHANGE. If no value is declared, it is understood that the stock is ordinary live stock. Different rates of freight are in effect on live stock chiefly valuable for breeding, racing, show purposes, or other special uses dependent on the valuation placed thereon by the shipper. Where the shipper of live stock chiefly valuable for breeding, racing, show purposes, or other special uses fails or refuses to declare its actual or released value, when such value is authorized by lawful tariff, such live stock will not be accepted for transportation.

[illegible]

If this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:

Delivery shall not be made of this shipment without payment of freight and all other lawful charges. (See section 4 of Conditions.)

.....
(Signature of Consignor.)

If charges are to be prepaid, write or stamp here, "To be prepaid."

Acknowledgment to be used if freight is prepaid.

Received \$....., to apply in prepayment of the charges on the property described herein.

.....
Agent or Cashier.

Per.....
(The signature here acknowledges only the amount prepaid.)

Charges advanced, \$.

Witness my hand: _____, *Shipper.*

THE COMPANY.

By..... *Shipper's Agent.*

By *Agent.*

Witness.

APPENDIX E.

CONFERENCE FORM—LIVE STOCK BILL OF LADING

Carriers' proposals with which shippers are unable to agree appear in underscored italics

SHIPPERS' COUNTER PROPOSALS

CONDITIONS

SEC. 1. Except in the case of its negligence proximately contributing thereto, no carrier or party in possession of any of the property herein described shall be liable for any loss thereof or damage thereto or delay caused by the act of God, the public enemy, quarantine, the authority of law, the inherent vice, weakness, or natural propensity or the act or default of the shipper or owner, or the agent of either, or by riots, strikes, stoppage of labor or threatened violence, *or resulting from any cause not due to carrier's negligence*, and the burden to prove freedom from negligence shall be on the carrier or party in possession.

Unless caused by the negligence of the carrier or its employees, no carrier shall be liable for or on account of any injury or death sustained by said property occasioned by any of the following causes: Overloading, crowding one upon another, escaping from cars, pens, or vessels; kicking or goring or otherwise injuring themselves or each other, suffocation, *fright, burning of hay or straw or other material used for feeding or bedding, or fire from any cause whatever*; heat or cold changes in weather or delay caused by stress of weather, or damage to or obstruction of track or other causes beyond the carrier's control.

In case of quarantine, the property may be discharged at risk and expense of owners into quarantine depot or elsewhere, as required by quarantine regulations or authorities, or for the carrier's dispatch, or at nearest available point in carrier's judgment, and in any such case carrier's responsibility shall cease when the property is so discharged, or the property may be returned by carriers at owner's expense to shipping point, earning freight both ways. Quarantine expenses of whatever nature or kind upon or in respect to the property shall be borne by the owners of the property or be a lien thereon. *No carrier shall be liable for loss or damage occasioned by fumigation or disinfection or other acts lawfully or unlawfully required or done by quarantine regulations or authorities, even though same may have been done by carrier's officers, crew, agents, or employees, nor for detention, loss, or damage of any kind occasioned by quarantine or the enforcement thereof. No carrier shall be liable for any mistake or inaccuracy in any information furnished by the carrier, its agents, or officers, as to quarantine or other laws or regulations. The shipper shall hold the carriers harmless from any expense they may incur or damages they may be required to pay by reason of the introduction of the property covered by this contract into any place against the quarantine or other laws or regulations in effect at such place.*

SEC. 2. In issuing this contract this company agrees to transport only over its own road or its own water line and, except as otherwise provided by law, acts only as agent with respect to the portion of the route beyond its own road or its own water line.

SEC. 3. No carrier is bound to transport said property by any particular train or vessel or in time for any particular market, or otherwise than with reasonable dispatch. Every carrier shall have the right in case of physical necessity to forward said property by any railroad or route between the point of shipment and the point of destination; but if such diversion be from a rail to a water route, the liability of the carriers shall be the same as though the entire carriage were by rail.

The amount of any loss or damage for which any carrier is liable shall be computed on the basis of the actual value of the property at the place and time of shipment under this contract, including the freight charges, if paid: *Provided, however, in all cases not prohibited by law, where a lower value than actual value has been represented in writing by the shipper or has been agreed upon or is determined by the classifications or tariffs upon which the rate is based, such lower value shall be the maximum amount to govern such computation whether or not such loss or damage occurs from negligence.*

Except in cases where the loss, damage, or injury complained of is due to delay or damage while being loaded or unloaded, or damaged in transit by carelessness or negligence, as conditions precedent to recovery, notice of claims must be given in writing to the originating or delivering carrier within ninety-one days after delivery of the property or, in case of failure to make delivery, then within ninety-one days after a reasonable time for delivery has elapsed; and claims must be made in writing to the originating or delivering carrier within four months and one day after the delivery of the property, or, in case of failure to make delivery, then within four months and one day after a reasonable time for delivery has elapsed, and suits for loss, damage, or delay shall be instituted only within two years and one day after delivery of the property or, in case of failure to make delivery, within two years and one day after a reasonable time for delivery has elapsed.

SEC. 4. The owner or consignee shall pay the freight and average, if any, and all other lawful charges accruing on said shipment, and, if required, shall pay the same before delivery. *The consignor shall be liable for the freight and all other lawful charges, except that if the consignor stipulates by signature in the space provided for that purpose on the face of this contract that the carrier shall not make delivery without requiring payment of such charges, and the carrier, contrary to such stipulation, shall make delivery without requiring such payment, the consignor shall not be liable for such charges. Nothing herein shall limit the right of the carrier to require at the time of shipment the payment or guarantee of charges.*

SEC. 5. Unless otherwise provided by lawful tariff, the shipper, at his own risk and expense, shall load and unload the property into and out of cars and, in case any person shall accompany the property in charge of the same, shall take care of feed, and water the property while being transported, whether delayed in transit or otherwise, and *see that all doors, and openings in the car or cars or the pens, or compartments in the vessel are at all times* so closed and fastened as to prevent the escape therefrom of any of the property.

Unless otherwise provided by lawful tariff, the shipper will, at his own cost and expense, provide bedding or other appliances for live stock suitable for its safe transportation, and will separate different kinds of stock in the same car by strong partitions which he will provide at his own expense and risk, and stock shall be at the entire risk of the shipper as to any damage that may occur by reason of the insufficiency or inadequacy of any such bedding, appliance, or partition.

Before the property is removed from the possession of the carrier or mingled with other property the shipper, owner, or consignee shall inform in writing the delivering carrier of any injury to the property.

SEC. 6. Except in case of diversion from rail to water route, which is provided for in section 3 hereof, if all or any part of said property is carried by water over any part of said route such water carriage shall be performed subject to the liabilities, limitations, and exemptions provided by statute and to the conditions contained in this bill of lading not inconsistent with statute or this section, and subject also to the condition that no such carrier or party in possession shall be liable for any loss or damage resulting from fire from any cause whatever, or for any loss or damage resulting from the perils of the lakes, seas, or other waters; or from vermin, heat, cold, frost, wet or change in weather, overloading, crowding one upon another, escaping from cars, compartments, pens, or vessels; kicking or goring or otherwise injuring themselves or each other, suffocation, fright, burning of hay or straw or other material used for feeding or bedding, or by riots, strikes, stoppage of labor or threatened violence, or delay caused by stress of weather or causes beyond the carrier's control; explosion bursting of boilers, breakage of shafts, or any latent defect in hull, machinery, or appurtenances, whether existing prior to, at the time of, or after sailing; or unseaworthiness; or from collision, stranding, or other accidents of navigation, or from prolongation of the voyage. And any vessel carrying any or all of the property herein described shall have the liberty to call at any port or ports, to tow and be towed, to transfer, to tranship, to lighter, to load and discharge goods at any time, and assist vessels in distress, and to deviate for the purpose of saving life or property. Such water carrier shall not be responsible for any loss or damage to property if it be necessary or is usual to carry such property upon deck.

If the ship owner shall have complied with the provisions of section 3 of the Harter Act, it is hereby agreed that the owners or consignees of the cargo shall contribute with the ship owner in the general average, and shall pay any salvage or special charges incurred, even though the necessity for the sacrifice or expenditures was brought about by fault in navigation or management of the ship.

If the property is being carried under a tariff which provides that any carrier or carriers party thereto shall be liable for loss from perils of the sea, then as to such carrier or carriers the provisions of this section shall be modified in accordance with the provisions of the tariff, which shall be treated as incorporated into the conditions of this bill of lading.

The term "water carriage" in this section shall not be construed as including lighterage across rivers or in lakes or other harbors when performed by or on behalf of the rail carrier. The said shipper hereby releases and waives any and all causes of action for damages that may have occurred to him by any written or verbal contract, relating to said property or the transportation thereof, made prior to the execution hereof, and any such contract is hereby canceled.

SEC. 7. Any alteration, addition, or erasure in this contract which shall be made without an indorsement thereof hereon, signed by the agent of the carrier issuing this agreement, shall be without effect, and this agreement shall be enforceable according to its original tenor.

SEPARATE CONTRACT WITH MAN OR MEN IN CHARGE OF LIVE STOCK

Station, 19....

In consideration of the carriage of the undersigned upon a freight train or vessel in charge of the live stock mentioned in the within contract, whether with or without charge for such carriage, each one of the undersigned severally hereby voluntarily assumes all risk of accident or damage to his person or property, and hereby releases and discharges each and every carrier from every claim, liability, or demand of any kind for or on account of any personal injury or damage of any kind sustained by him, unless caused by the negligence of such carrier or any of its employees or otherwise; and agrees that whenever he shall leave the caboose and pass over or along the cars or track he will do so at his own risk of personal injury, from whatever cause, and that no carrier shall be required to stop or start its train or caboose cars at or from the depots or platforms, or to furnish light for his accommodation or safety.

Witness.

(Signature of man or men in charge.)

CARETAKERS' CONTRACT

To insert after the words "whatever cause" in the fifth line thereof the additional words "other than that of negligence of the carrier." The National Live Stock Exchange would eliminate after the words "agrees" in the fourth line thereof the following words: "that whenever he shall leave the caboose and pass over or along the cars or track he will do so at his own risk of personal injury, from whatever cause, and * * *" the Corn Belt Meat Producers' Association proposes that the words "from whatever cause" in the fifth and sixth line thereof be omitted and the words "except where the negligence of the carrier contributes thereto" be inserted in lieu thereof.

within six months, or nine months in case of export traffic, after a reasonable time for delivery has elapsed; and suits for loss, damage, or delay, shall be instituted only within two years and one day after delivery of the property, or in case of failure to make delivery, then within two years and one day after a reasonable time for delivery has elapsed."

Sec. 5, par. 1. To eliminate the words "see that all doors and openings in the car or cars or the pens, or compartments in the vessel are at all times," and to substitute in lieu thereof the following words: "Whenever such person shall open or close any door or opening in the car or cars or the pen or compartments in the vessel, he shall see that the same are * * *."

Sec. 5, par. 2. To eliminate the whole paragraph.

Sec. 5, par. 3. To add at the end of said paragraph the following: "but this provision is directory and the failure to comply therewith shall not deprive the shipper, owner, or consignee of the right to recover for such injury."

The National Live Stock Exchange would eliminate this section entirely.

Sec. 6. The shippers make no specific proposal with respect to this section, but suggest that the same language be used as may be adopted as section 9 of the uniform merchandise bill of lading, including therein the definition of the term "water carriage" as contained in the fourth paragraph of the present form. The National Live Stock Exchange would eliminate this section and substitute in lieu thereof the following: "The transportation of any property under the terms of this bill by lighter, car float, or car ferry, in or across rivers, harbors, or lakes shall be deemed to be transportation by rail."

CARETAKERS' CONTRACT

To insert after the words "whatever cause" in the fifth line thereof the additional words "other than that of negligence of the carrier." The National Live Stock Exchange would eliminate after the words "agrees" in the fourth line thereof the following words: "that whenever he shall leave the caboose and pass over or along the cars or track he will do so at his own risk of personal injury, from whatever cause, and * * *" the Corn Belt Meat Producers' Association purposes that the words "from whatever cause" in the fifth and sixth line thereof be omitted and the words "except here the negligence of the carrier contributes thereto" be inserted in lieu thereof.

and grade without respect to ownership (and prompt notice thereof shall other charges hereunder.

SEC. 4. (a) Property not removed by the party entitled to receive it after notice of the arrival of the property at destination or at the port of at destination has been made, may be kept in vessel, car, depot, warehouseman, only, or at the option of the carrier, may be removed to the owner, and there held without liability on the part of the carrier, at

(b) Where nonperishable property which has been transported to entitled to receive it fails to receive it within 15 days after notice of arrival at such place as may be designated by the carrier: *Provided*, That the carrier unclaimed, as the case may be, and that it will be subject to sale under description of the property, the name of the party to whom consigned, or two successive weeks, in a newspaper of general circulation at the place publication of notice of sale after said notice that the property was refused

(c) Where perishable property which has been transported hereunder receive it shall fail to receive it promptly, the carrier may, in its discretion sale: *Provided*, That if time serves for notification to the consignor or owner notification shall be given, in such manner as the exercise of due diligence

(d) Where the procedure provided for in the two paragraphs last preceding right of the carrier at its option to sell the property under such circumstances

(e) The proceeds of any sale made under this section shall be applied of notice, advertisement, sale, and other necessary expense and of carrying balance it shall be paid to the owner of the property sold hereunder.

(f) Property destined to or taken from a station, wharf, or landing cars or vessels or until loaded into cars or vessels, and, except in case of risk until the cars are attached to and after they are detached from loco

SEC. 5. No carrier hereunder will carry or be liable in any way for applications or tariffs unless a special agreement to do so and a stipulated value

SEC. 6. Every party, whether principal or agent, shipping explosive and indemnify the carrier against all loss or damage caused by such goods

SEC. 7. Except in those instances where it may lawfully be authorized by this bill of lading until all tariff rates and charges thereon have been stipulated, by signature, in the space provided for that purpose on the bill and the carrier, contrary to such stipulation, shall make delivery with the right of the carrier to require at time of shipment the prepayment described in this bill of lading, the freight charges must be paid upon the

SEC. 8. If this bill of lading is issued on the order of the shipper, or of lading as to the statement of value or otherwise, or election of commodity of this bill of lading as fully as if the same were written or made in or in

SEC. 9. (a) If all or any part of said property is carried by water or and all the exemptions from liability contained in, the Act of the Congress vessels, etc.," and of other statutes of the United States according carrier consistent therewith or with this section.

(b) No such carrier by water shall be liable for any loss or damage age of shafts, unless caused by the design or neglect of such carrier.

(c) If the owner shall have exercised due diligence in making the vessel for any loss or damage resulting from the perils of the lakes, seas, or other of, or after sailing, or from collision, stranding, or other accidents of navigation any or all of the property herein described shall be at liberty to call at load and discharge goods at any time, to assist vessels in distress, to such carrier shall not be responsible for any loss or damage to property

(d) General average shall be payable according to York-Antwerp Rules York. If the owners shall have exercised due diligence to make the vessel of danger, damage or disaster resulting from faults or errors in navigation appurtenances, or from unseaworthiness, whether existing at the time or not discoverable by the exercise of due diligence), the shippers, consignee cargo, and shall contribute with the shipowner in general average to the common benefit or to relieve the adventure from any common peril.

(e) If the property is being carried under a tariff which provides that or carriers the provisions of this section shall be modified in accordance

(f) The term "water carriage" in this section shall not be construed SEC. 10. Any alteration, addition, or erasure in this bill of lading which shall be without effect, and this bill of lading shall be enforceable according

of the same kind
there is a railroad,
venience in handling
cost. Each carrier
upon or on account
after notice in writ-
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in six months after
want to be recovered,
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er acts required or
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charged, or property
tions or authorities,
for country damage
while the property is
men to prove freedom
estimation, or tender
notice of the arrival
ly, for loss, damage,
the act of God, the
except as hereinafter

The agreed or

Per.....

Permanent post-

FORM PRESCRIBED BY THE INTERSTATE COMMERCE COMMISSION

This form of contract to be used for shipments of Live Stock and Wild Animals instead of Uniform Bill of Lading

COMPANY

UNIFORM LIVE-STOCK CONTRACT.—ORIGINAL.—NOT NEGOTIABLE

STATION, 19...
THIS AGREEMENT, made this...day of..., 192., by and between the...COMPANY,
party of the first part, hereinafter called the carrier,* and... (Shipper's name)

part...of the second part, hereinafter called the shipper;
WHEREAS, The classifications and tariffs under which this agreement is made require that, for the purpose of applying the lawful rate of freight, the shipper must declare the shipment to be "Ordinary Live Stock," specifying the kind or kinds of animals, or if not "Ordinary Live Stock" he must declare the kind and value of each animal, space for such declaration being provided below:
NOW, THEREFORE, THIS AGREEMENT WITNESSETH, That the carrier has received from the shipper, subject to the classifications and tariffs in effect on the date of issue of this agreement, the live stock described below, in apparent good order, except as noted, consigned and destined as indicated below, which the carrier agrees to carry to its usual place of delivery at said destination, if on its road or on its own water line, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier* of all or any of said live stock over all or any portion of said route to destination, and as to each party at any time interested in all or any of said live stock, that every service to be performed and every liability incurred in connection with said shipment shall be subject to all the conditions, whether printed or written, herein contained, including the conditions on back hereof, and which are agreed to by the shipper and accepted for himself and his assigns.

Consigned to...
Destination...State of..., County of...
Route...
Car Initials and Numbers...

ORDINARY LIVE STOCK.

Ordinary live stock means all cattle, swine, sheep, goats, horses, and mules, except such as are chiefly valuable for breeding, racing, show purposes, or other special uses. On shipments of ordinary live stock no declaration of value shall be made by the shipper, nor shall any values be entered on this bill of lading.

I (We) declare the shipment covered by this bill of lading to be ordinary live stock.

Shipper.

OTHER THAN ORDINARY LIVE STOCK.

On shipments of live stock chiefly valuable for breeding, racing, show purposes, or other special uses different rates of freight are in effect dependent on the valuation placed thereon by the shipper; which valuation may be the basic value as stated in the classification, at which the lowest freight rate applies, or it may be any higher valuation up to actual value, in which event the freight rate will be higher by the amount prescribed in the tariffs or classifications. Such declared or agreed values shall be entered in the column provided therefor in this bill of lading, and in no event shall the carrier be liable for any amount in excess of such valuation.

I (We) declare the shipment covered by this bill of lading to be other than ordinary live stock, and of the value herein declared, or agreed upon, and entered.

Shipper.

NOTE.—The shipper shall execute one of the above declarations. Upon refusal of a shipper of other than ordinary live stock to declare the values of said stock for entry in this bill of lading the shipment will not be accepted for transportation under this contract. In the event the shipment consists of both ordinary live stock and other than ordinary live stock, both of such declarations shall be executed, but values shall be declared and entered on only the other than ordinary live stock.

NUMBER AND DESCRIPTION OF ANIMALS.	SHIPPER'S DECLARED VALUE. (If on live stock chiefly valuable for breeding, racing, show purposes, or other special uses.)	WEIGHT. (Subject to correction.)	RATE OF FREIGHT.	
			Per 100 pounds.	Per car.

If this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:
Delivery shall not be made of this shipment without payment of freight and all other lawful charges. (See section 3 of Conditions.)

If charges are to be prepaid, write or stamp here, "To be prepaid."

Acknowledgment to be used if freight is prepaid.

Received \$....., to apply in prepayment of the charges on the live stock described hereon.

Agent or Cashier.

Per.....
(The signature here acknowledges only the amount prepaid.)

Charges advanced, \$.....

Witness my hand:....., Shipper.
By....., Shipper's Agent.
THE.....COMPANY.
By....., Agent.
....., Witness.

*The word "carrier" is to be understood throughout this contract as including any person or corporation in possession of the live stock under the contract.
86728"—22. (Follow p. 364A.) No. 5

APPENDIX F.

CONTRACT TERMS AND CONDITIONS

SEC. 1. (a) Except in the case of its negligence proximately contributing thereto, no carrier or party in possession of all or any of the live stock herein described shall be liable for any loss thereof or damage thereto or delay caused by the act of God, the public enemy, quarantine, the authority of law, the inherent vice, weakness, or natural propensity of the animal, or the act or default of the shipper or owner, or the agent of either, or by riots, strikes, stoppage of labor or threatened violence.

(b) Unless caused by the negligence of the carrier or its employees, no carrier shall be liable for or on account of any injury or death sustained by said live stock occasioned by any of the following causes: Overloading, crowding one upon another, escaping from cars, pens, or vessels, kicking or goring or otherwise injuring themselves or each other, suffocation, fright, or fire caused by the shipper or the shipper's agent, heat or cold, changes in weather or delay caused by stress of weather or damage to or obstruction of track or other causes beyond the carrier's control.

(c) In case of quarantine, the live stock may be discharged at risk and expense of owners into quarantine depot or elsewhere, as required by quarantine regulations or authorities, or for the carrier's dispatch, or at nearest available point in carrier's judgment, and in any such case carrier's responsibility shall cease when the property is so discharged, or the property may be returned by carriers at owner's expense to shipping point, earning freight both ways. Quarantine expenses of whatever nature or kind upon or in respect to the property shall be borne by the owners of the property or be a lien thereon. In case a shipment is stopped in transit by quarantine, the carrier shall immediately give notice of such fact to the shipper or consignee. Except in the case of its negligence proximately contributing thereto, no carrier shall be liable for loss or damage occasioned by fumigation or disinfection or other acts required or done under quarantine regulations or authorities, nor for detention, loss, or damage of any kind occasioned by quarantine laws or in the enforcement thereof; and the shipper shall hold the carrier harmless for any expense it may incur or damages it may be required to pay by reason thereof.

SEC. 2. (a) No carrier is bound to transport said live stock by any particular train or vessel or in time for any particular market, or otherwise than with reasonable dispatch. Every carrier shall have the right in case of physical necessity to forward said live stock by any carrier or route between the point of shipment and the point of destination.

(b) In all cases not prohibited by law, where a lower value than actual value has been represented in writing by the shipper or has been agreed upon in writing as the release value of the live stock as determined by the classification or tariffs upon which the rate is based, such lower value, plus freight charges, if paid, shall be the maximum amount to be recovered whether or not such loss or damage occurs from negligence.

(c) Claims for loss, damage, or injury to live stock must be made in writing to the originating or delivering carrier or carriers issuing this bill of lading within six months after delivery of the live stock (or, in case of export traffic, within nine months after delivery at port of export) or, in case of failure to make delivery, then within six months (or nine months in case of export traffic) after a reasonable time for delivery has elapsed; provided, that if such loss, damage or injury was due to delay or damage while being loaded or unloaded, or damaged in transit by carelessness or negligence, then no notice of claim nor filing of claim shall be required as a condition precedent to recovery. Suits for loss, damage, injury or delay shall be instituted only within two years and one day after delivery of the live stock, or in case of failure to make delivery, then within two years and one day after a reasonable time for delivery has elapsed; *Provided*, that in case the claim on which suit is based was made in writing within six months, or nine months in case of export traffic (whether or not filing of such claim is required as a condition precedent to recovery) suit shall be instituted not later than two years and one day after notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof specified in the notice.

SEC. 3. Except in those instances where it may lawfully be authorized to do so, no carrier by railroad shall deliver or relinquish possession of the live stock covered by this bill of lading until all tariff rates and charges have been paid. The consignor shall be liable for the freight and all other lawful charges, except that if the consignor stipulates by signature in the space provided for that purpose on the face of this contract that the carrier shall not make delivery without requiring payment of such charges, and the carrier contrary to such stipulation, shall make delivery without requiring such payment, the consignor shall not be liable for such charges. Nothing herein shall limit the right of the carrier to require at the time of shipment the payment or guarantee of charges.

SEC. 4. (a) The shipper at his own risk and expense shall load and unload the live stock into and out of cars, except in those instances where this duty is made obligatory upon the carrier by statute or is assumed by a lawful tariff provision. In case any person shall accompany the live stock in charge of same, he shall take care of, feed and water the live stock while being transported, whether delayed in transit or otherwise, and whenever such person shall open or close any door or opening in the car or cars, or the pens or compartments in the vessel, he shall see that the same are so closed and fastened as to prevent the escape therefrom of any of the live stock.

(b) When bedding or appliances of a character not generally in use in the transportation of live stock are required they shall be furnished by the shipper at his own expense and he shall separate different kinds of stock when loaded in the same car by adequately strong partitions and such stock shall be at the risk of the shipper as to any damage resulting from the insufficiency or inadequacy of any such bedding, appliance, or partition.

(c) Before the live stock is removed from the possession of the carrier or mingled with other live stock the shipper, owner, consignee or agent thereof shall inform in writing the delivering carrier of any visible or manifest injury to the live stock.

SEC. 5. (a) If all or any part of said live stock is carried by water over any part of said route, such water carriage shall be performed subject to all the terms and provisions of and all the exemptions from liability contained in, the Act of the Congress of the United States, approved on February 13, 1893, and entitled "An act relating to the navigation of vessels, etc.," and of other statutes of the United States according carriers by water the protection of limited liability, and to the conditions contained in this bill of lading not inconsistent therewith or with this section.

(b) No such carrier by water shall be liable for any loss or damage resulting from any fire happening to or on board the vessel, or from explosion, bursting of boilers or breakage of shafts, unless caused by the design or neglect of such carrier.

(c) If the owner shall have exercised due diligence in making the vessel in all respects seaworthy and properly manned, equipped, and supplied, no such carrier shall be liable for any loss or damage resulting from the perils of the lakes, seas, or other waters, or from latent defects in hull, machinery, or appurtenances, whether existing prior to, at the time of, or after sailing, or from collision, stranding, or other accidents of navigation, or from prolongation of the voyage. And, when for any reason it is necessary, any vessel carrying any or all of the live stock herein described shall be at liberty to call at any port or ports, in or out of the customary route, to tow and be towed, to transfer, transship, or lighter, to load and discharge goods at any time, and assist vessels in distress, to deviate for the purpose of saving life or property, and for docking and repairs. Except in case of negligence, such carrier shall not be responsible for any loss or damage to live stock if it be necessary or is usual to carry the same upon deck.

(d) General average shall be payable according to York-Antwerp Rules, 1890, and, as to any matter not therein provided for, according to the law and usage of the port of New York. If the owners shall have exercised due diligence to make the vessel in all respects seaworthy and properly manned, equipped and supplied, it is hereby agreed that in case of danger, damage or disaster resulting from faults or errors in navigation, or in the management of the vessel, or from any latent or other defects in the vessel, her machinery or appurtenances, or from unseaworthiness, whether existing at the time of shipment or at the beginning of the voyage (provided the latent or other defects or the unseaworthiness was not discoverable by the exercise of due diligence), the shippers, consignees and/or owners of the cargo shall nevertheless pay salvage and any special charges incurred in respect of the cargo, and shall contribute with the shipowner in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred for the common benefit or to relieve the adventure from any common peril.

(e) If the live stock is being carried under a tariff which provides that any carrier or carriers party thereto shall be liable for loss from perils of the sea, then as to such carrier or carriers the provisions of this section shall be modified in accordance with the tariff provisions, which shall be regarded as incorporated into the conditions of this bill of lading.

(f) The term "water carriage" in this section shall not be construed as including lighterage in or across rivers, harbors, or lakes, when performed by or on behalf of rail carriers.

SEC. 6. Any alteration, addition, or erasure in this contract which shall be made without an indorsement thereof hereon, signed by the agent of the carrier issuing this agreement, shall be without effect, and this agreement shall be enforceable according to its original tenor.

SEPARATE CONTRACT WITH MAN OR MEN IN CHARGE OF LIVE STOCK

In consideration of the carriage of the undersigned upon a freight train or vessel in charge of the live stock mentioned in the within contract, whether with or without charge for such carriage, each one of the undersigned severally hereby voluntarily assumes all risk of accident or damage to his person or property, and hereby releases and discharges each and every carrier from every claim, liability, or demand of any kind for or on account of any personal injury or damage of any kind sustained by him, unless caused by the negligence of such carrier or any of its employees; and agrees that whenever he shall leave the caboose and pass over or along the cars or track he will do so at his own risk of personal injury, except where the negligence of the carrier proximately contributes thereto, and that no carrier shall be required to stop or start its train or caboose cars at or from the depot or platforms, or to furnish light for his accommodation or safety.

..... Station, 10—
.....
.....
.....
.....
(Signature of man or men in charge.)

Witness.

that any carrier or carriers party thereto shall be liable for loss from perils of the sea, then as to such carrier with the tariff provisions, which shall be regarded as incorporated into the conditions of this bill of lading, as including lighterage in or across rivers, harbors, or lakes, when performed by or on behalf of rail carriers. This shall be made without the special notation hereon of the agent of the carrier issuing this bill of lading, binding its original tenor.

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NOV 15 1922

No. 11424.

BOSTON WOOL TRADE ASSOCIATION

v.

ABILENE & SOUTHERN RAILWAY COMPANY ET AL.

PORTIONS OF FOURTH SECTION APPLICATIONS
NOS. 345 AND 349.*Submitted July 7, 1921. Decided November 3, 1921.*

1. Reasonable classification ratings prescribed on wool, mohair, camel's wool and hair, angora hair, and alpaca.
2. Proportional commodity rates to Boston, Mass., on wool in the grease, in carloads, from Mississippi River crossings, not shown to be unreasonable.
3. Proportional commodity rates to Boston from Duluth, Minn., lake and rail, on wool and mohair in the grease, in carloads, found unreasonable. Reasonable basis of maximum rates prescribed.
4. Commodity rates to Boston from Texas points, all rail, on wool and mohair in the grease, in carloads, found unreasonable. Reasonable basis of maximum rates prescribed. Corresponding rail-water-and-rail rates to Boston not shown to be unreasonable.
5. Consideration of fourth section applications postponed.
6. Defendants' failure to accord transit at Boston on wool and mohair originating west of the Hudson River and to publish consolidated wool tariffs found not unreasonable or otherwise unlawful.

Mason Manghum, H. A. Davis, and G. E. Mace for complainant.
H. C. Bush and Robert W. Fyfe for defendants parties to western classification; and *J. N. Steadwell* for southern classification lines.
H. A. Scandrett and LeRoy Wilcox for Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon-Washington Railroad & Navigation Company, Northern Pacific Railroad Company, Great Northern Railroad Company, and Los Angeles & Salt Lake Railroad Company; *Wm. L. Barnett* for New York, New Haven & Hartford Railroad Company; *Geo. H. Fernald, jr.*, for Boston & Albany Railroad Company and New York Central Railroad Company, lessee; *W. A. Cole* for Boston & Maine Railroad; *Guernsey Orcutt* for Pennsylvania Railroad Company, Pittsburgh, Cincinnati, Chicago & St. Louis Railroad Company, Grand Rapids
64 I. C. C.

& Indiana Railway Company, Official Classification Committee, and Central Freight Association; and *S. C. Matthews* for Central Freight Association.

C. W. Owen for Southern Pacific lines; *B. M. Meyers* for Atchison, Topeka & Santa Fe Railway Company; *J. H. Grant* for New York, Chicago & St. Louis Railroad Company; and *F. R. Newman* for Michigan Central Railroad Company.

F. W. Smith for official classification lines, intervener.

REPORT OF THE COMMISSION.

DIVISION 4, COMMISSIONERS MEYER, EASTMAN, AND POTTER.

EASTMAN, *Commissioner*:

Exceptions were filed by complainant and by defendants to the report proposed by the examiner and the case was orally argued. We have reached conclusions differing in some respects from those suggested by the examiner.

Complainant is a voluntary association of individuals, partnerships, and corporations engaged in the purchase and sale of wool, with headquarters at Boston, Mass. Complainant alleges in substance:

(1) That defendant carriers, parties to consolidated freight classification No. 1, have failed to establish, observe, and enforce just and reasonable classification ratings and charges on wool, mohair, camel's wool, camel's hair, alpaca hair, and angora goat hair, when in the grease, scoured, noils, tops, or waste, in violation of section 1 of the interstate commerce act;

(2) That the rates on these several kinds of wool and hair from specified western and southwestern points to Boston and other eastern points are unjust, unreasonable, unjustly discriminatory, and unduly prejudicial, in violation of sections 1, 2, 3, and 4 of the act;

(3) That the tariffs naming these rates are complicated and ambiguous in violation of section 6 of the act; and

(4) That the refusal of defendants to permit transit on wool and mohair at Boston and adjacent points is in violation of sections 1, 2, and 3 of the act.

We are asked to prescribe just and reasonable classification ratings, rules, rates, charges, and practices for the future, and to establish transit on wool at Boston. Rates are stated hereinafter in cents per 100 pounds.

The issues are comprehensive. The ratings on some of the wools vary widely in the three classification territories, and complainant seeks uniform ratings on a "scientific basis." Defendants are not opposed to greater uniformity, but propose ratings higher in many instances than those sought by complainant, and in some instances than those now in effect. The methods of packing and shipping, the characteristics of the wool, the volume of movement, etc., differ in the three territories. Complainant admits that ratings in the terri-

tory west of the Mississippi River, on traffic moving all rail, are on a proper basis, and by exceptions to the classification in official territory the New England lines provide lower ratings on certain kinds of wool moving in volume. The ratings suggested by complainant are based largely on those now applicable in that section and in the west.

"Wool in the grease" is the commercial designation of wool before removal of the grease, dust, and other foreign substances which, in western territory, comprise about two-thirds of the weight. It is called "fleece" wool when obtained by shearing the live animal and "pulled" wool when removed from the pelt of a dead animal by chemical process or sweating. Wool from which the grease, dirt, etc., has been cleansed is known as "scoured" wool. Scoured wool is assorted and graded, and made ready for the spinner by carding and combing. The resultant strands of long fibers are known as "tops" and the short fibers as "noils." The waste and by-products resulting from various manufacturing processes are included in the term "waste."

WOOL IN THE GREASE.

In the following table are shown the present ratings on wool in the grease and those suggested by complainant and defendants:

Wool, n. o. i. b. n.	Offi- cial.	South- ern.	West- ern.	Pro- posed by com- plain- ant.	Pro- posed by de- fend- ants.
In the grease, unwashed or washed, not scoured:					
In bags or bales, not machine pressed, l. c. l.	1	2	2	2	1
In machine-pressed bales, l. c. l.	2	2	2	2	2
In packages named, c. l., min. wt. 16,000 lbs., subject to rule 34.	3	2		3	3
Same, min. wt. 24,000 lbs.			4		
In sacks or bales, c. l., compressed to density less than 19 lbs. per cu. ft., c. l., min. wt. 24,000 lbs.				4	
In sacks or bales, compressed to density of not less than 19 lbs. per cu. ft., c. l., min. wt. 32,000 lbs.				4	
In machine-pressed bales, c. l., min. wt. 30,000 lbs., subject to rule 34.					4

¹ In New England, by exception to the classification, second class.

² In New England, by exception to the classification, fourth class.

³ In official classification territory, rule 26.

The largest volume of wool in the grease originates west of the Mississippi River. Reports of the Department of Agriculture show that during the year 1918 more than 186,000,000 pounds of fleece wool were produced in that section out of a total production for the United States of 256,870,000 pounds. The production of pulled wool in 1919 was 48,300,000 pounds, of which it is estimated that between 30,000,000 and 40,000,000 pounds originated in the Chicago packing-house district alone. The total clip in 1919 was 265,459,000 pounds. In southern territory the clip was 7,482,000 pounds in

1918, and in the following year 10,370,000 pounds. It appears, therefore, that the south produces only about 4 per cent of the total. Practically the entire movement of wool between points in southern territory consists of less-than-carload shipments of wool in the grease. No carload ratings have been established on wool in that territory and a witness for the Southern Classification Committee testified that since 1901 wool, in the grease, scoured, tops, noils, and waste, have all been rated second class, any quantity. Complainant's interest is largely in the ratings in official and western territories. The Southern Classification Committee, on brief, offers to adopt the ratings suggested by the other two committees.

Between 80 and 90 per cent of the domestic clip moves in sacks 7 by 3 by 3 feet. The average weight of the sacks in western territory is said to be about 350 pounds, or 5.5 pounds per cubic foot. In the south the weight per cubic foot averages about 4 pounds and ranges from 3 to 8 pounds. The variation results in part from the lack of uniformity in packing. Western wool contains a larger percentage of dirt than eastern wool and weighs over one-third more. At least 24,000 pounds of western wool, in sacks, may be loaded in a 36-foot car, while not more than 15,000 or 16,000 pounds of eastern wool so packed can be loaded in a car of that size. Domestic wool is rarely baled except in the west, and there it is compressed to a density usually exceeding 19 pounds per cubic foot. The bales are slatted on the sides, banded with wires, and covered with burlap. In official territory wool in the grease, in machine-pressed bales, weighs from 12.7 pounds to 16.4 pounds per cubic foot. The average loading of domestic wool in the grease, in bales, on the Southern Pacific in 1916 was 30,000 pounds; in 1918, 36,785 pounds; and in 1919, 33,452 pounds. The average loading of imported wool on the same railroad was 34,800 pounds in 1916, 50,553 pounds in 1918, and 51,885 pounds in 1919.

The average price per pound of fine and fine medium territorial grease wool was 18 cents in July, 1913; 53 cents in December, 1918; and 60 cents on January 1, 1920. The above figures are taken from a bulletin of the Department of Agriculture. The prices in cents per pound of medium wool in the grease, shown in a booklet issued by a Boston bank, were 23.5 in 1913, 27.5 in 1914, 36.5 in 1915, 41 in 1916, 74.5 in 1917, 78 in 1918, 65 in 1919, and 68 on January 1, 1920. The average prices in cents per pound of pulled wools were 31.25 in 1913, 43.6 in 1915, and from 56 to 86 in 1919. Prices have since declined to a much lower level and the demand for wool at any price is said to be limited.

In *In re Transportation of Wool, Hides, and Pelts*, 23 I. C. C., 151, hereinafter called *Wool Investigation*, we recommended that in west-

ern territory wool in the grease should be rated second class in less than carloads, and fourth class in carloads, minimum 24,000 pounds for a standard 36-foot car, with correspondingly higher minima for larger equipment. No order was entered, but the ratings recommended were voluntarily established. In *Traugott Schmidt & Sons v. M. C. R. R. Co.*, 23 I. C. C., 684, we referred to the fact that the conditions under which wool is transported in the west are "materially different" from those prevailing east of the Mississippi River, and said, at page 686:

Upon the basis of the classification established by us for wool under the western classification, we are of the opinion that this commodity under the official classification is properly classified as first class in less-than-carload lots; in carload lots it might well take the third-class rate, with a minimum of 16,000 pounds.

The carload rating in official territory then in effect was second class, minimum 10,000 pounds. The ratings named in the cases cited are now maintained in these respective territories.

It will be observed from the preceding table that the carload ratings in all territories apply alike to shipments in bags and in bales, and make no distinction between bales, machine pressed and not machine pressed. This accords with our recommendations in *Wool Investigation*. Defendants earnestly contend that we erred by failing to distinguish between the ratings on wool in bags and bales, not machine pressed, and in bales machine pressed. They argue that this and similar action in connection with mohair, resulted in the only exceptions in the classification to the general principle that where a commodity susceptible of compression is shipped uncompressed it shall take a higher rating.

In the case of commodity rates, this principle was recognized in *Wool Investigation*, where we found reasonable for wool, in machine-pressed bales having a density of 19 pounds or more per cubic foot, minimum 32,000 pounds in 36-foot cars, commodity rates which were somewhat lower than the similar rates on wool in sacks, minimum 24,000 pounds. West of the Mississippi River the proportional commodity rates on the latter wool were slightly lower than the fourth-class rates, the proportionals on the machine-pressed bales being still lower by 15 per cent. East of the Mississippi River the proportionals on both classes of wool were higher than the fourth-class rates, the latter being about 47 per cent of the first-class rates, while the proportionals on the wool in sacks and on the wool in machine-pressed bales were about 55 and 50 per cent, respectively.

In *Fox's Sons v. B. & A. R. R. Co.*, 49 I. C. C., 656, we found the rates on South American and Australian wool in the grease, in 64 I. C. C.

machine-pressed bales, in carloads, from New York and Boston to La Porte, Ind., unreasonable to the extent that they exceeded the fourth-class rates, minimum not in excess of 32,000 pounds in a standard 36-foot car.

Complainant suggests third class in all territories on wool in sacks and bales, not compressed, minimum 16,000 pounds, the same as now applies in official territory; and fourth class on wool in sacks or bales, compressed, minimum 24,000 pounds if the density is less than 19 pounds per cubic foot, and 32,000 pounds if the density is greater. Because of the lighter weight of eastern wools it is not possible to load cars originating in official territory as heavily as those containing western wools which move through that territory en route to Boston. Complainant states that the third-class rating on uncompressed shipments, minimum 16,000 pounds, would satisfactorily provide for the lighter eastern wools, for some of the western wools, and for the requirements of small mills that buy quantities not exceeding 16,000 pounds. Defendants do not object to this rating. The fourth-class rating with varying minima predicated on the degree of compression is intended to provide not only for the heavy western and imported wools and for such shipments of heavy wools, in sacks or bales, as originate within official and southern territories—for example, pulled wools from Chicago, which load to 32,000 pounds or more per car—but also to provide what complainant deems more important, namely, fourth class on shipments of western wool en route through official territory to New England. Such wool is now rated third class in official territory, but generally moves from the Mississippi River crossings to the east on the commodity rates above mentioned, which are lower than third class but somewhat higher than fourth class. Defendants object to the varying minimum weights proposed by complainant, based on the degree of compression, on the ground that they would necessitate strict check weighing, make possible weight manipulations, and “introduce in the application of rates a vast amount of uncertainty and confusion.” They note complications which would arise in applying rule 10 covering carload mixtures, if bales of varying densities were loaded in the same car, and in applying rule 34 governing minimum weights for cars exceeding 36 feet in length.

In *Consolidated Classification Case*, 54 I. C. C., 1, the carriers proposed the following uniform carload ratings for all territories:

	Class.
In bags, or in bales not machine pressed, c. l., min. wt. 16,000 lbs., subject to rule 34-----	3
In machine-pressed bales, c. l., min. wt. 30,000 lbs., subject to rule 34----	4
In bags, or in bales not machine pressed, and in machine-pressed bales, c. l., min. wt. 30,000 lbs., subject to rule 34-----	4

Our comment and recommendations, at page 49, were as follows:

It will be noted that the present rating and minimum applicable to shipments in bags, or in bales not machine pressed, is continued for official territory and extended to western territory, but that ratings of fourth class, minimum 30,000 pounds, have been provided for shipments in machine-pressed bales and for mixed shipments. The proposed ratings, as applied to official territory, would represent a reduction of one class in rating and an increase of 14,000 pounds in minimum. In western territory, there would be an increase of one class in rating and a reduction of 8,000 pounds in minimum weight, on shipments in bags, or in bales not machine pressed, and on mixed shipments, while on the other form of package the present rating would be continued, subject to an increase of 6,000 pounds in minimum weight. This increase of 6,000 pounds brings protest from the National Wool Growers' Association.

We are of opinion that the most satisfactory disposition of this complicated situation is to continue the present carload rating and minimum in western territory on all forms of packages and extend the same provisions to the official territory. This would have the effect in official classification of substituting a new provision carrying an increase in minimum weight. It is noted that this increase, coupled with a reduction of the official rating to fourth class, would not greatly increase the minimum per car charges.

Defendants now claim that they were in error in suggesting fourth class in official territory, even for shipments in compressed bales with a minimum of 30,000 pounds, for the reason that fourth class is relatively a lower rating in that territory than in either western or southern territory. As evidence of this, they direct attention to the fact, to which we have already adverted, that the proportional commodity rates prescribed in *Wool Investigation* were lower for both classes of wool in western territory and higher in official territory than the corresponding fourth-class rates. Support for the claim is also afforded by the statistics in Appendix No. 2, *Consolidated Classification Case, supra*. It there appears that in official territory fourth class is 47 per cent of first class in the Chicago-New York scale, and 50 per cent in the scales which we have prescribed in central and New England territories; that in western territory it is 60 per cent in the Shreveport, Memphis-southwestern, and Missouri River-Nebraska scales, prescribed by us, 50 per cent in the Iowa-Kansas and Nebraska scale likewise prescribed by us, and an average of 54.5 per cent in 34 other western scales noted in the said appendix; and that in southern territory it averages 62 per cent in 65 scales which are also there noted. It further appears that complainant and defendants are agreed that the rating of third class should be retained in official territory for wool, in bags or sacks, minimum 16,000 pounds. Under our recommendation in *Consolidated Classification Case, supra*, this rating would have been abolished.

The situation is one where uniformity in the three territories is difficult to secure, because, in the first place, western wool and eastern

wool are really different articles, owing to the higher percentage of dirt in the former; and because, in the second place, the existence of but 8 classes in official territory as contrasted with 10 in western and southern territories results in a substantial difference in the relative levels of the fourth-class ratings. Complainant suggests that the greater traffic density and the more favorable operating conditions in official territory justify lower charges, but this is a matter which is reflected in the basic rates and which is not controlling in determining the percentage relationship of the various classes.

In our judgment the rating of third class, minimum 16,000 pounds, is well suited to the wool produced in official territory, when shipped in bags or sacks; and the rating of fourth class, minimum 24,000 pounds, is likewise well suited to the wool produced in western territory when similarly shipped. Wool compressed to a high density in machine-pressed bales is entitled to relatively lower rates, but this is a matter which is provided for in western territory by the existing commodity rates, and which can and should be provided for in official territory, in the exceptional cases where it is practicable to ship in large quantities per car, by the establishment of similar commodity rates, following the precedent of *Fox's Sons v. B. & A. R. R. Co.*, *supra*.

We therefore find that the ratings attacked, applicable in western and official territories on carload shipments of wool in the grease, washed or unwashed, not scoured, have not been shown to be unreasonable, but that the rating attacked, applicable in southern territory on carload shipments of such wool, is unreasonable to the extent that it exceeds fourth class, minimum 24,000 pounds, subject to rule 34.

Wool in the grease, in less than carloads, is now rated second class in all three territories, except that in official territory shipments in bags or bales, not machine pressed, are rated first class. The second-class rating was found reasonable in *Wool Investigation* and in *Traugott Schmidt & Sons v. M. C. R. R. Co.*, *supra*. In *Consolidated Classification Case*, *supra*, we recommended extending to official territory the ratings then effective in western territory. These recommendations have not been adopted by the carriers. The present record deals with the three classification territories and the ratings, present and proposed, have been discussed in detail by the classification representatives. As stated, the less-than-carload movement of wool in the grease is negligible, except in the south, where second class applies, and in New England, where the carriers, by exceptions to the classification, apply second class on shipments in bags or bales. In view of the relatively low density of the eastern wool, when not

compressed, we do not find that the ratings attacked on wool in the grease, in less than carloads, are unreasonable.

SCOURED WOOL.

The present and proposed ratings on scoured wool are shown below:

Scoured wool.	Offi- cial.	South- ern.	West- ern.	Pro- posed by com- plain- ant.	Pro- posed by de- fend- ants.
In bags or bales, not machine pressed, l. c. l.	1½	2	D1	.....	D1
In sacks, l. c. l.	1	2	1½	1½	1½
In machine-pressed bales, l. c. l.	2	2	1½	1½	2
In packages named, c. l., min. wt. 10,000 lbs., subject to rule 34..	2	2	1½	.....	.....
In sacks, c. l., min. wt. 10,000 lbs. ....	.....	.....	.....	3	.....
In bales, c. l., min. wt. 14,000 lbs. ....	.....	.....	.....	3	.....

¹In New England, by exception to the classification, third class.

Scoured wool is usually shipped in bags 7 by 3 by 3 feet, weighing from 100 to 116 pounds, or less than 2 pounds per cubic foot. These weights are about one-third the weight of grease wool in bags of the same size. The value of scoured wool is fully three times that of grease wool. In December, 1918, scoured wool was worth \$1.60, and at the time of the hearing as much as \$2.10 per pound. In 1918 about 100,000,000 pounds of wool in the grease were sent from Boston to be scoured, most of the scouring plants being within 30 miles of that city. A large part of the scoured wool was later returned to Boston, and after being sold was shipped to mills by truck or rail. There are very few scouring plants west of Chicago, and commodity rates on scoured wool have been generally established from these western plants to New England and other points. The movement of scoured wool is largely within New England, and on such shipments the carriers, by exception to the classification, apply third-class rates, minimum 10,000 pounds. The trade unit on scoured wool is 10,000 pounds, and complainant asserts that not more than that amount of fine scoured wool, which comprises the majority of shipments, can be loaded in a 36-foot car. Complainant asks a third-class rating on scoured wool, minimum weight 10,000 pounds in sacks and 14,000 pounds in bales. The latter minimum is suggested to take care of the California pulled wools, which are somewhat heavier than ordinary scoured wools. Defendants submitted an exhibit showing the carload ratings in official classification No. 45 of all articles taking minimum weights of 10,000 pounds. A majority of these articles are rated second class or higher. Another of their exhibits

shows that in western territory the second-class rating usually applies in connection with a 10,000-pound minimum.

In *Massachusetts-Maine Wool Rates*, 28 I. C. C., 396, we said:

Still later the Commission considered rates on scoured wool, which is lighter than either eastern or western wool in the grease, the dirt having been removed. It appeared that scoured wool, uncompressed, could not be loaded much, if any, in excess of 10,000 pounds to the car, and the opinion was expressed that upon this wool a carload rate substantially equivalent to second class with a minimum of 10,000 pounds might properly be charged. 25 I. C. C., 185.

In *Knight Woolen Mills v. C. & N. W. Ry. Co.*, 32 I. C. C., 490, we prescribed a minimum of 13,500 pounds on scoured wool, compressed, in bales, subject to rule 6-B of the western classification, from Chicago, Ill., to Utah common points and a rate of \$2.25, the first-class rate between those points being \$2.45. A less-than-carload rate of \$3 was fixed in that case.

We find that the less-than-carload ratings on scoured wool in western territory are unreasonable to the extent that they exceed one and one-fourth times first class on shipments in bags or bales, not machine pressed, and first class on shipments in machine-pressed bales, but that the less-than-carload ratings attacked in the other territories have not been shown to be unreasonable. We further find that the second-class rating on scoured wool, in carloads, minimum 10,000 pounds, subject to rule 34, applicable in all territories has not been shown to be unreasonable.

WOOL TOPS.

The present and proposed ratings on wool tops are as follows:

Wool tops.	Official.	South- ern.	West- ern.	Proposed by com- plain- ant.	Proposed by de- fend- ants.
In bags, l. c. l.	1 1½	2	D1	.....	D1
In bales, not machine pressed, l. c. l.	1 1½	2	D1	.....	D1
In machine-pressed bales, l. c. l.	1	2	1½	.....	1½
In packages named, c. l., min. wt. 16,000 lbs., subject to rule 34.	2 2	2	2	.....	2
In bags or bales, l. c. l. ....	.....	.....	.....	1½	.....
In bags or bales, c. l., min., wt. 10,000 lbs. ....	.....	.....	.....	2	.....

¹ In New England, by exception to the classification, first class.

² In New England, by exception to the classification, minimum 10,000 pounds.

Tops are the highest grade of wool, the value per pound ranging in 1913 from 55 cents to 83.9 cents and in 1918 from \$1.27 to \$2.30 per pound. The tops are wound in balls, a number of which are put in standard balelike packages 4 by 3 by 3 feet. These packages are of burlap, have handles on the side and, according to a classification witness, have a density of 16.7 pounds per cubic foot. Apparently tops are also shipped in bags, the density of such shipments being

about 9.6 pounds per cubic foot. The movement of tops in the west is negligible, and carload movements are confined almost wholly to New England and to an occasional shipment from New Jersey and Pennsylvania. Although seldom compressed, 16,000 pounds of tops, according to complainant's witness, can be loaded in a car. A minimum of 16,000 pounds was sought in the complaint, but complainant now asks that the minimum be made 10,000 pounds, since that is the "trade unit." A witness for the classification committee showed that during a given period three cars of wool tops handled by the New York, New Haven & Hartford averaged 18,106 pounds per car. The sizes of the cars are not given.

By exceptions to the classification, the New England carriers maintain a carload minimum of 10,000 pounds, and a less-than-carload rating of first class whether shipped in machine-pressed bales or in bags. These exceptions take care of the larger part of the movement. Wool tops, in carloads, are rated the same as scoured wool in all three territories, the minimum on the former being 16,000 pounds and on the latter 10,000 pounds. Defendants justify this relationship on the theory that while tops have a heavier density per cubic foot than scoured wool, their higher value compensates for this weight difference.

We find that the present ratings on wool tops have not been shown to be unreasonable, except that the ratings in western territory applicable on less-than-carload shipments are unreasonable to the extent that they exceed one and one-fourth times first class on shipments in bags or bales, not machine pressed, and first class on shipments in machine-pressed bales.

WOOL NOILS AND WASTE.

The present and proposed ratings on wool noils and waste are:

Wool noils and wool waste.	Official.	Southern.	Western.	Proposed by complainant.	Proposed by defendants.
Wool noils:					
In bags, or in bales not machine pressed, l. c. l.....	1	2	D1	1	1 $\frac{1}{4}$
In machine-pressed bales, l. c. l.....					1 $\frac{1}{4}$
In packages named, c. l., min. wt. 16,000 lbs., subject to rule 34.....	1 $\frac{1}{2}$	2	2	3	2
Wool waste, including wool clips, wool tags, or woolen or worsted mill sweepings or waste:					
In bags or in bales, not machine pressed, l. c. l.....	1	2	1	1	1
In bags, or in bales, not machine pressed, c. l., min. wt. 10,000 lbs., subject to rule 34.....	1 $\frac{1}{2}$	2	2		2
In machine-pressed bales, l. c. l.....	2	2	2	2	2
In machine-pressed bales, c. l., min. wt. 16,000 lbs., subject to rule 34.....	3	3	3		3
In bags or in bales, not machine pressed, and in machine-pressed bales, c. l., min. wt. 16,000 lbs., subject to rule 34..	3	3	3		3
In bags, c. l., min. wt. 10,000 lbs., subject to rule 34.....				3	
In bales, c. l., min. wt. 14,000 lbs.....				3	

¹ In New England, by exception to the classification, third class.

Wool noils are described by a classification witness as the highest grade of wool waste. They weigh about the same per cubic foot as scoured wool, and represent an intermediate stage between wool waste and wool tops. The density per cubic foot in southern territory is from 4.5 to 8 pounds. The average loading of 19 cars was 8,354 pounds. While less valuable than either scoured wool or tops, the value has increased considerably in past years, the three-eighths blood, for example, being worth about 70 cents per pound in December, 1918, as compared with 32.5 cents in 1913. Like wool tops, the largest movement is in New England and the carriers in that territory, by exception to the classification, have provided a carload rating of third class.

Wool waste comprises a wide variety of products, weighing from 3 to 14 pounds per cubic foot, and readily loads 16,000 pounds in a 36-foot car. It weighs a little more than scoured wool and is sometimes shipped in bags or bales, not machine pressed. The average price for the so-called one-quarter blood tarred waste was 21.25 cents in 1913 and 48 cents in the latter part of 1918. By exception to the classification, wool waste, in carloads, minimum 10,000 pounds, is rated third class in New England.

We find that the ratings attacked on wool noils and waste have not been shown to be unreasonable, except that in western territory the less-than-carload ratings on wool noils are unreasonable to the extent that they exceed first class.

MOHAIR, CAMEL'S WOOL AND HAIR, AND ALPACA HAIR.

Complainant asserts that mohair is the same as Angora-goat hair, and on the theory that both are analogous to wool and are so rated in western and official territories, asks that wool ratings be uniformly applied. In southern territory mohair is rated higher than wool. Mohair is used in the manufacture of car seats, clothing, plushes, etc., and until a few years ago was imported chiefly through Pacific coast ports. At the present time a considerable quantity is produced in Texas and New Mexico, whence it is shipped to Boston for handling and subsequent distribution in New England and central territories. It is of about the same value as wool, and like wool is shipped in sacks or bales. Mohair loads somewhat more heavily than wool, and 36,000 pounds can be loaded in a 36-foot car.

In *National Mohair Growers' Asso. v. A., T. & S. F. Ry. Co.*, 23 I. C. C., 180, we held that the rates on mohair from western territory to eastern destinations should not exceed the contemporaneous rates on wool, and that mohair should be rated second class, in less than carloads, and fourth class, in carloads, minimum 24,000 pounds for a

36-foot car. Defendants in official and western territories state that they are willing to classify mohair and wool alike.

At the present time there is no specific rating on camel's wool or hair, and the rates charged thereon are those applicable on hair, n. o. i. b. n. These commodities are somewhat more valuable than wool, originate chiefly in China and Russia, are imported through Pacific coast ports, and are purchased f. o. b. port of entry. They are packed in uniform bales 1 foot 8 inches by 2 feet 4 inches by 2 feet 9 inches, averaging 510 pounds. They can be compressed to from 45 to 60 pounds per cubic foot, and 40,000 pounds can be loaded readily in a 36-foot car.

Complainant states that there is no difference between camel's wool and camel's hair, the terms being used interchangeably; that the Department of Commerce and the Treasury Department have recognized camel's hair as a form of wool; and that the present tariff act specifically provides that the word "wool" shall include camel's hair. It further states that there is a product known commercially as camel's mane, differing from the body wool in the matter of length, that most of the manes received from Russia are classified as camel's wool, that in sorting the wools from the body and mane are placed together, and that both are used in the manufacture of clothing of various kinds and for mixing with other wools and cotton used in the manufacture of articles like press cloth. In view of these facts complainant urges that camel's wool and hair be rated the same as wool in the grease and mohair from Pacific coast points.

A witness for defendants testified that they had been unable to determine whether camel's wool and camel's hair should be regarded as "wool" or as "hair" and signified willingness to leave the matter to our judgment.

In *Ayres, Bridges & Co. v. Director General*, 58 I. C. C., 748, we held that the import rate on wool in the grease was applicable on shipments of camels' manes imported from Russia and shipped from Vancouver, British Columbia, to New York.

Alpaca hair is imported from Peru in bales ranging in weight from 60 to 800 pounds and varying greatly in size. From 150 to 200 of the smaller bales and from 35 to 40 of the larger bales can be loaded in a 36-foot car. It is used principally in the manufacture of clothing for women and moves in carload quantities in official territory only. No specific rating is published, the ratings on hair, n. o. i. b. n., being applied. Complainant asks that alpaca hair be rated the same as wool and shows that it is classed as wool by the Treasury Department. Defendants are apparently willing to apply the same ratings as on wool.

We find that the ratings attacked, applicable on mohair, camel's wool and hair, and alpaca hair, are and for the future will be unreasonable to the extent that they exceed the ratings contemporaneously applicable within the respective classification territories on wool in like form, package, and quantity.

The preceding findings with respect to the ratings on wool of the various descriptions are not to be construed as authorizing increases in commodity rates or rates based on exceptions to the classification which are lower than the class-rate basis. The ratings prescribed are higher in some instances than those effective in other territories. Whether such lower ratings should be correspondingly increased is not in issue, and that question is not affected by our findings.

COMMODITY RATES FROM MISSISSIPPI RIVER CROSSINGS.

From points in western territory lying east of what is known as the transcontinental base line, coinciding roughly with the eastern boundaries of California, Oregon, and Washington, commodity rates on wool in the grease are in general published to points in official territory, made up of proportional commodity rates to the Mississippi River, St. Paul, or Duluth, and proportional commodity rates beyond. From points west of the line mentioned, where the influence of the low water-competitive rates is felt, joint rates are published which have some relation to combinations of rates based on Pacific coast terminals.

The factors of rates west of the Mississippi River, except from Texas, are not attacked. Complainant alleges that the proportional commodity rates from the river to Boston were and are unjust, unreasonable, unjustly discriminatory, and unduly prejudicial. The rates in effect prior to August 26, 1920, were 77.5 cents on wool in sacks, and 70 cents on wool in machine-pressed bales. Complainant contends that these rates should not have exceeded 65.5 cents on shipments in sacks and 56.5 cents on shipments in bales. It appears that 65.5 cents was the fourth-class rate in effect at the time of hearing from the Mississippi River to Boston, and that 56.5 cents is 85 per cent of that rate.

In *Wool Investigation* we considered the reasonableness of the rates on wool from the origin territory in question to eastern points and, although no order was entered, our conclusions were adopted by the carriers. Certain proportional commodity rates were found reasonable from western points lying east of the transcontinental base line to the Mississippi River and St. Paul, and from those points to eastern destinations. These commodity rates were coupled with car-load minima of 24,000 pounds on sacked wool and 32,000 pounds on

wool compressed in bales to a density of 19 pounds per cubic foot. The western proportionals were made 15 per cent less on the baled wool than on the sacked wool. With respect to the eastern proportionals from the Mississippi River we said, at page 176:

The present fourth-class rate from St. Louis to Boston is 45 cents, to New York 41 cents. In our opinion a reasonable through rate would be constructed from western points of origin to those destinations by adding to the rates which we have prescribed up to St. Louis in case of sacked wool 52 cents to Boston and 48 cents to New York; in case of baled wool 47 cents to Boston and 43 cents to New York.

As has already been stated, the highest of the proportional commodity rates found reasonable for movements in western territory was less than fourth class between the same points, whereas the lowest commodity rate found reasonable for the movement of the same wool in official territory exceeded fourth class. Subsequent increases in rates have not altered this relationship.

Complainant accepts as reasonable the ratings and rates prescribed in western territory in *Wool Investigation*. It also accepts as reasonable the first-class rates in western and official territories. The basis of rates which it proposes was determined as follows: The commodity rates on wool in sacks prescribed in *Wool Investigation* from Alliance, Nebr., Cheyenne, Wyo., Mandan, N. Dak., Mondak, Mont., and Trinidad, Colo., to the Mississippi River or St. Paul averaged 47.8 per cent of first class. On the theory that wool should take no higher percentage of first class in official territory than in western, and that fourth class in official territory is 47 per cent of first class, complainant argues that wool in sacks should move in official territory on fourth-class rates, minimum 24,000 pounds. On baled wool, minimum 32,000 pounds, the rates asked are 85 per cent of those on sacked wool, following the relationship in western territory.

The five points mentioned above are points which were selected in *Wool Investigation* for the purpose of fixing basic proportional rates on various lines of railroad, upon the ground that they were the most easterly points from which wool then moved in any considerable quantities. From points farther west it was found that the rates should increase not exceeding 2 cents for every 25 miles. Complainant's computation, based upon the proportional rates and the first-class rates from these five points, falls far short of establishing that the proportional commodity rates in western territory on wool in sacks average 47.8 per cent of the corresponding first-class rates. Upon the foundation of this computation alone, however, we are asked to find that our conclusions in *Wool Investigation*, upon a much more comprehensive record, were wrong with respect to proportional

commodity rates from the Mississippi River, and that relatively lower rates, taking into consideration subsequent increases, should now be prescribed. It is sufficient to say that the evidence presented is entirely inadequate to warrant such a reversal of conclusions. We find, therefore, that the proportional commodity rates attacked from the Mississippi River to Boston have not been shown to be unreasonable.

LAKE-AND-RAIL RATES.

A large part of the wool from Montana, North Dakota, and South Dakota moves via Duluth and the Great Lakes. The rates to Duluth are, generally speaking, proportional commodity rates made upon the basis already described. At the time of the hearing, the lake-and-rail rate from Duluth to Boston, published by the Great Lakes Transit Corporation was 81.5 cents, minimum 16,000 pounds. Although published as a commodity rate it equaled third class and included marine insurance. The contemporaneous fourth-class rate from Duluth to Boston was 57.5 cents. While the commodity rate has since been increased, its relationship to the class rates is still the same. Complainant asks that fourth class be fixed on wool in the grease from Duluth to Boston, that rate being about 47 per cent of first class. The rate sought on baled wool is 85 per cent of the rate on sacked wool.

While the evidence is insufficient to support the rates which complainant seeks, it nevertheless appears that western wool, when shipped through Duluth, moves from that point to Boston on rates equivalent to the class-rate basis prevailing in official territory. We have already found that third class, minimum 16,000 pounds, is an appropriate rating for the wool grown in the east but not for the heavier wool which is produced in western territory, when shipped in sacks, and still less when shipped in machine-pressed bales. In recognition of this fact, proportional commodity rates from the Mississippi River, as we have seen, have been established which are lower than the third-class rates; and no good reason appears why similar rates should not be established from Duluth. We therefore find that the proportional carload commodity rate from Duluth to Boston, lake and rail, on wool and mohair in the grease, in bags or sacks, is, and for the future will be, unreasonable to the extent that it exceeds 55 per cent of the contemporaneous first-class rate, minimum 24,000 pounds, subject to rule 34, and that the corresponding rate on wool and mohair in the grease, in machine-pressed bales, is, and for the future will be, unreasonable to the extent that it exceeds 50 per cent of the contemporaneous first-class rate, minimum 32,000 pounds, subject to rule 34. Rates so made will be on approximately the

same basis as the proportional commodity rates found reasonable in *Wool Investigation* from the Mississippi River to Boston.

RATES FROM TEXAS.

Complainant alleges that the commodity rates on wool in the grease from various points of origin in Texas to Boston, both all-rail, and rail, water, and rail, are unreasonable, and asks us to prescribe from these Texas points certain specific rates which it claims are reasonable. It appears that the all-rail specific rates which it seeks are equivalent to 47.8 per cent of the first-class rates to and from Memphis, Tenn., and that the rail-water-and-rail rates are 47.8 per cent of the through first-class rates over the routes in question. We have already pointed out the absence in the record of any adequate basis for the adoption of such a formula in the construction of wool rates.

Examination of the tariffs shows that the all-rail rates from Texas points to Boston on carload shipments are combinations of certain any-quantity rates to the Mississippi River and the third-class rates, minimum 16,000 pounds, beyond. The any-quantity rates are somewhat lower when the wool is shipped in compressed bales than when it is shipped in sacks. Analyzing the present rates from Fort Worth, a representative point in Texas common-point territory, to Boston, it appears that they are made up of a factor to New Orleans of \$1.945 on wool in sacks or \$1.81 on wool in bales, plus a factor of \$1.085 in both cases beyond, making through rates of \$3.03 and \$2.895 respectively. The present fourth-class rate from Fort Worth to New Orleans is \$1.47. The factor of \$1.085 beyond is the third-class rate. From El Paso, a representative point in Texas differential territory, the rate to Boston is made up of a factor to New Orleans of \$2.25 on wool in sacks or \$2.08 on wool in bales, plus the factor of \$1.085, beyond. The present fourth-class rate from El Paso to New Orleans is \$1.875.

It will be seen that these commodity rates exceed the class basis which we have found reasonable and that, even if the class rates were applied, it would involve the movement of western wool in official territory on a basis which we have found appropriate only for the lighter-loading wool which is produced in the east. The present rates are so high that apparently very little wool moves all rail. No good reason has been shown why commodity rates all rail from Texas points to Boston should not be established on substantially the same basis as now prevails from other wool-producing territory in the west to Boston. We therefore find that the proportional carload commodity rates from Texas points to Mississippi

River crossings are, and for the future will be, unreasonable on wool and mohair in the grease, in bags or sacks, destined to Boston, to the extent that they exceed the contemporaneous fourth-class rates, minimum 24,000 pounds, subject to rule 34; and that the corresponding proportional carload commodity rates on wool and mohair, in the grease, in machine-pressed bales, are, and for the future will be, unreasonable to the extent that they exceed 85 per cent of the contemporaneous fourth-class rates, minimum 32,000 pounds, subject to rule 34. We further find that the proportional carload commodity rates from Mississippi River crossings to Boston on wool and mohair in the grease, in bags or sacks, originating at Texas points, are, and for the future will be, unreasonable to the extent that they exceed 55 per cent of the contemporaneous first-class rates, minimum 24,000 pounds, subject to rule 34; and that the corresponding rates on wool and mohair in the grease, in machine-pressed bales, are, and for the future will be, unreasonable to the extent that they exceed 50 per cent of the contemporaneous first-class rates, minimum 32,000 pounds, subject to rule 34.

The rail-water-and-rail rates attacked are much lower and are built up by the combination of the intrastate rail rate to Galveston, the water rate from Galveston to New York, and the rail rate from New York to Boston, plus a wharfage charge of 1.5 cents per 100 pounds at Galveston. From Fort Worth the present through rate is \$2.455 with a minimum of 20,000 pounds, and \$2.285 with a minimum of 24,000 pounds. The similar combination of the present fourth-class rates is \$2.32. From El Paso the present through rate is \$2.545 with a minimum of 20,000 pounds and \$2.375 with a minimum of 24,000 pounds. The similar combination of fourth-class rates is \$2.83. We find that the rail-water-and-rail rates attacked have not been shown to be unreasonable. In connection with the Texas situation other causes of complaint are set forth but are not supported by any substantial evidence and need not be considered.

AMBIGUITY OF TARIFFS.

Complainant alleges that the commodity rates to Boston on wool and mohair originating west of the west bank of the Mississippi River are not uniform, the rates in some cases being published as proportional rates to and from the river and in others as through rates. Other causes of complaint are that the tariffs do not show clearly and concisely all points of origin; that some tariffs name commodity rates which exceed the class rates; and that many are ambiguous, requiring diligent study and the use of additional tariffs to determine the proper rates. In consequence of this tariff situation complainant's members have been quoted erroneous rates and sub-

jected to numerous overcharges and undercharges. In order to cure these alleged violations of section 6 of the act, complainant urges that defendants be required to issue not more than four consolidated wool and mohair tariffs which shall name through rates, all rail, rail and ocean, and rail and lake, from all points of origin above referred to, to all points in official territory east of the Buffalo-Pittsburgh line.

It will not be helpful to discuss the particular tariffs referred to in detail by the complainant. Under the powers conferred by section 6 of the act we have promulgated certain rules and regulations governing the form and construction of tariffs. Those rules require that rates be explicitly stated and arranged in a systematic manner. They do not require the publication of joint rates from and to all points.

At the hearing it was stated on behalf of the Southern Pacific Company that the lines comprising that system have prepared a tariff that will name through rates from all points from which wool has been shipped during the past four years, regardless of how the rates are made. On brief, complainant indicates that this tariff, if published, will in all probability remove the cause of complaint so far as rates via that system are concerned. Without doubt there is room for improvement in the publication of the wool rates, and other defendant carriers will be expected to take action similar to that proposed by the Southern Pacific Company.

FOURTH SECTION APPLICATIONS.

By fourth section order No. 2814 of March 6, 1913, the transcontinental carriers were permitted to maintain lower rates on wool to eastern points from Pacific coast terminals than from intermediate points. There were set for further hearing with this case the applications upon which this fourth section order was issued and also the applications of all the defendant carriers which ask for authority to continue rates on wool from points west of the Mississippi River to eastern destinations which are lower than the rates contemporaneously maintained on like traffic from intermediate points. Evidence was offered to show that water competition has again become an important factor and therefore that a continuation of the present departures should be authorized. These applications, however, are being investigated in another proceeding and will not be considered in this case.

TRANSIT.

The many grades of wool and the requirements of the trade necessitate concentrating large quantities for assorting and grading in order that manufacturers may purchase wool of the kind and

quantity required. Boston is a concentrating point, and two factors have, it seems, contributed largely to the dominant position which it now occupies in the wool trade. The first of these is the financial support of local banking interests and the second its proximity to the large woolen mills of New England. Of all the wool used in the United States 60 per cent is consumed in New England and about 43 per cent in Massachusetts alone. A large part of this wool is brought from the west to Boston or suburban points, where the packages are opened, the wool assorted and graded, and sales made. Considerable wool in the grease is shipped from Boston to scouring plants located within 30 miles, and after scouring is reshipped to Boston. The various kinds of wool are ultimately shipped from Boston warehouses to mills throughout New England, and on such shipments the local rates apply in all instances. Complainant asks for the establishment at Boston and other near-by points in the so-called metropolitan switching district of transit arrangements which will permit wool and mohair originating at points in the United States west of the Hudson River to be stopped at Boston for inspection, weighing, grading, assorting, storing, etc., and to be moved thence to New England mill points upon a through charge composed of the rates from point of origin to Boston, plus a transit charge of 2.5 cents, plus certain proposed back-haul rates from Boston to the mills. The failure of defendants to provide such an arrangement at Boston and the other points named is alleged to be unreasonable, unjustly discriminatory, and unduly prejudicial.

The joint rates on wool from the far west apply to all New England points including Boston. The wool dealer at a point in the middle west where transit is permitted, Chicago for example, may make shipments direct to the mill from the transit point on the basis of the through rate plus a transit charge of 2.5 cents. The Boston dealer, selling to the same mill, must pay the same rate to Boston as the western shipper pays to the mill point and, in addition thereto, must pay outbound rates based on distance. Boston is at the termini of the rail lines, and movements to New England mill points through Boston involve an out-of-line or back-haul service in every instance. In recognition of this condition, which admittedly does not exist at Chicago, complainant suggests a schedule of outbound transit rates ranging from 1.5 cents for distances up to 20 miles to 10 cents for distances between 190 and 220 miles. These rates were suggested prior to the general increases of 1920. Since the most important wool-consuming territory is within 70 miles of Boston and the majority of the mills within 60 miles, the suggested rates would range from 1.5 to 5 cents. Lawrence, Mass., the greatest wool-consuming point in the world, is about 35 miles from Boston;

the local carload rate to Lawrence on grease wool prior to the general increases of 1920 was 17 cents and the rate suggested by complainant for that distance is 2 cents. In July, 1919, about 94 per cent of the wool shipped from Boston via the Boston & Maine was destined to 11 mill points in Massachusetts and New Hampshire distant 26 to 56 miles from Boston. The mills on the Boston & Albany are from 19 to 150 miles west of Boston.

There is no substantial evidence that the outbound rates from Boston to the mills are unreasonable. The evidence submitted is directed toward the alleged unjust discrimination and undue prejudice to Boston and the undue preference of Chicago, St. Louis, Omaha, and Detroit, at which points transit is permitted on wool originating west thereof. Complainant asks that transit arrangements like those granted at the other points named be established at Boston by the New England lines. They further ask that transit be established on wool from all points in the United States west of the west bank of the Hudson and on domestic wool reaching Boston by water, on which the New England lines earn no inbound revenue.

The rates on wool from California and north Pacific coast points to eastern defined territory are, as has been seen, joint rates; from other western points they are the aggregates of the intermediate rates based on St. Paul, Duluth, St. Louis, or other Mississippi River crossings. In *Wool Investigation* we said, at page 169:

The rate from Pacific coast terminals and from all that territory bordering upon the coast where the combination upon the terminal controls the rate, is the same to Boston that it is to intermediate territory. These conditions, among which the freight rate is an important factor, have contributed to make Boston the great wool market of the United States.

It was shown in that case that the wool rates from the far west were those made by combinations upon St. Louis or Chicago, and that ordinarily the combinations of the rate from a wool-producing station to an intermediate point like Omaha plus the rate from that point to the seaboard were higher than the through rates. In that proceeding Detroit and Omaha insisted that they be put on a parity in this respect with Chicago and St. Louis, and we said, at page 170:

It is patent that the ability of St. Louis and Chicago to handle this wool upon what is equivalent to the through rate, while Omaha and Detroit can not do so, results not from any natural advantage possessed by these favored communities, but solely from the artificial circumstance that the tariffs of these carriers are so constructed as to "break" at these points.

Our report indicated that as the result of this rate structure "no city at which the rates did not break" could handle western wool upon a parity of rates with Boston. We held, at page 177, that—

Transit should be allowed at intermediate points on a direct line upon payment of 2.5 cents per 100 pounds, and upon the condition that it applies only

to wool originating west of the Mississippi River, which must be kept separate from wool originating at points east of the river.

Following that decision transit was accorded wool shipments at Omaha and Detroit so that those cities, as well as Chicago and St. Louis, might compete with Boston.

While the lines serving Boston join with the western lines in through rates on eastbound wool which include transit if authorized by the tariffs of the individual carriers, transit is accorded only on the rails of the western lines and the eastern carriers receive the same earnings as though the wool had moved without transit.

The fact that dealers at these other points have transit has apparently not affected the supremacy of Boston as a wool market. *Wool Investigation* was decided in 1912. The wool receipts by cars at the Boston terminals of the New Haven and the Boston & Albany for six years beginning in 1914 are shown below:

	New Haven.	B. & A.
1914.....	4, 476 cars.	1, 493 cars.
1915.....	4, 473 cars.	1, 560 cars.
1916.....	4, 488 cars.	2, 441 cars.
1917.....	4, 736 cars.	2, 975 cars.
1918.....	6, 525 cars.	3, 026 cars.
1919.....	6, 226 cars.	2, 637 cars.

The record indicates that the Boston & Maine brings into Boston annually from 1,500 to 1,700 cars of wool. It will be observed from the above figures that the receipts for 1918 and 1919 were respectively 60 per cent and 48 per cent greater than in 1914. Defendants estimate that in the 18 months prior to June 25, 1920, about 15,000 carloads of wool were handled through Boston. During this same period 498 cars were transited at St. Louis, of which 60 went to Boston; and 638 cars at Chicago, of which 106 went to Boston and 388 to other New England destinations. Although Chicago has had transit since 1912, it is apparent that comparatively little wool has been transited at that point. Complainant asserts, however, that the limited use of transit at Chicago was due to conditions arising from the war and it apprehends serious disadvantage will for the future be suffered by Boston dealers unless transit is also accorded them.

The transportation situation at Boston differs so materially from that at the middle western points named as to make comparison difficult. Boston has long been the preeminent wool market of the country, to which at the present time two-thirds of the domestic wool crop is consigned as well as large quantities of imported wool. This traffic reaches Boston over the lines of the New Haven, the Boston & Albany, and the Boston & Maine terminating at Boston. The mills also are located on the rails of these carriers, but at in-

terior points, and shipments from the west consigned directly to those mills would not move through Boston but through other junctions which afford shorter hauls and avoid the freight congestion in the vicinity of Boston. As has been stated, if wool moves through Boston an out-of-line service consisting in most instances of a back haul is required. Under the rates in force prior to August 26, 1920, the Boston carriers received a minimum rate of 17 cents on the outward movement. The Boston & Maine estimates that its earnings for the year 1919 would have been reduced by from \$300,000 to \$500,000 under the transit arrangement demanded by complainant.

Complainant shows that some of the western lines have a schedule of special charges under which they permit back hauls in connection with transit arrangements. The tariffs cited, however, apply almost without exception in connection with wool concentrated for reshipment at points west of the Mississippi River. They do not operate generally to reduce outbound distributing rates on wool treated and merchandised at the transit or concentrating point, that being the result which would flow from the transit arrangement sought by complainant. The transit arrangements at Chicago do not permit back hauls, and the location of that city makes back hauls unnecessary. In *Stock & Sons v. L. S. & M. S. Ry. Co.*, 31 I. C. C., 150, we said, at page 153:

The theory of transit is service at some point between the points of origin and destination of the traffic, and in the direction of the movement of the traffic to the point of final destination. A back haul is contrary to the purpose of transit and should generally be permitted only to meet unusual situations, and when to do so does not result in unjust discrimination or other violations of law.

The difficulty of policing transit at Boston appears to be almost insurmountable. Wool reaches that market from all parts of the world where wool is grown. The packages are there opened; the wool is assorted and graded, reshipped to scouring plants, and trucked from one warehouse to another; changes of ownership occur; and a substantial portion of the wool finally moves to the mills by motor truck. No such conditions exist at Chicago and the other middle western points, where domestic wools are handled and where the western and eastern wools may be easily kept separate as required by our findings in *Wool Investigation*. No transit arrangements exist at New York or at Philadelphia, the situation at the latter point being fairly comparable with that at Boston. Philadelphia, in close proximity to the woolen mills of New Jersey and southern Pennsylvania, is a distributing center for wools and while ranking next to Boston is nevertheless a relatively small market.

In view of the dissimilarity of conditions as between Boston and the western points where transit is permitted, it is not clear that the
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discrimination complained of is undue or unlawful. From answers by complainant's only witness to questions of counsel for defendants, it is clear that the elimination of transit on wool at the western points would not satisfy complainant; in other words, complainant seeks transit at Boston in order to reduce the through transportation charges on wool from all points west of the west bank of the Hudson to the New England mills.

Boston has not been shown upon the present record to be suffering materially from the existence of transit at Chicago and other points. Upon this record we find that the allegation of undue prejudice respecting transit arrangements has not been sustained. This finding is without prejudice to what might be determined upon a more complete investigation of the transit situation.

An appropriate order will be entered.

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INVESTIGATION AND SUSPENSION DOCKET No. 1358.

BOX SHOOKS FROM GEORGIA, NORTH AND SOUTH
CAROLINA, AND VIRGINIA TO EASTERN POINTS.

Submitted October 5, 1921. Decided November 2, 1921.

Proposed rates on box shooks from points in Virginia, North Carolina, and South Carolina to destinations in New York and other eastern states found not justified. Suspended schedules ordered canceled.

Henry Wolf Biklé and Edwin A. Lucas for Pennsylvania Railroad Company and its affiliated lines.

Henry Thurtell for Seaboard Air Line Railway Company.

Wilbur La Roe, jr., and W. J. Strobel for protestants.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, AITCHISON, AND LEWIS.

BY DIVISION 1:

By schedules filed to become effective July 10, 1921, respondents propose to cancel certain specific rates on box shooks, in carloads, from points in Virginia, North Carolina, and South Carolina to destinations in New York, New Jersey, Pennsylvania, and other eastern states and to substitute therefor the prevailing lumber rates. The suspended schedules would effect both increases and reductions. Upon protest of the Shook Manufacturers Association, Incorporated, the North Carolina Pine Association, Incorporated, and certain shippers the schedules were suspended until December 7, 1921. Rates will be stated in cents per 100 pounds.

Rates on box shooks from points in Virginia, North Carolina, and South Carolina were and are included in the lumber tariffs. As fully described in *Water Competitive Rates on Lumber*, 60 I. C. C., 643, "water-competitive" rates on lumber and certain lumber products are published from this territory to approximately 380 destinations along the Atlantic coast, while to intermediate and other interior cities a higher or "normal" basis applies. When these water-competitive rates on lumber were established some 20 years ago, box shooks received the benefit of the reductions then effected. Certain manufacturers of box shooks were in position to ship by boat or barge, and in order to retain this traffic the carriers about 1903 established

rates on box shooks from Norfolk, Va., and vicinity to New York, N. Y., lower than the water-competitive lumber rates. Publication of rates lower than the prevailing lumber rates spread not only as to points of origin, but as to destination territory. At the present time such rates apply from about 30 points of origin on the Atlantic Coast Line, Southern, and Seaboard Air Line railways in southern Virginia, North Carolina, and South Carolina. The number of such rates from different points of origin varies. Generally speaking, all points of origin enjoy specific rates on box shooks to points in and near New York. Some points of origin have in addition an extensive line of rates varying from the lumber rates not only to water-competitive points but to interior destinations. The rates are often restricted to apply only via certain originating lines and via certain routes. The carriers propose to cancel the specific rates on box shooks, thereby making effective on box shooks the present water-competitive rates on lumber to destinations to which such rates are published, and the "normal" rates on lumber to destinations to which such rates apply.

The increases would range from 0.5 to 11.5 cents. Certain rates would remain unchanged, while still others would be reduced, a few of them substantially. The following is illustrative:

	Routes.	Present rate.	Proposed rate.
Emporia, Va., to—		<i>Cents.</i>	<i>Cents.</i>
New York, N. Y.:			
Pa. track delivery.....	Atlantic Coast Line.....	30	32
Pa. lighterage delivery.....	do.....	26.5	32
Bayonne, N. J.:			
C. of N. J. delivery.....	do.....	26.5	32
L. V. delivery.....	do.....	30	32
Pa. (Nat. docks) delivery.....	do.....	26.5	26.5
Pa. lighterage delivery.....	do.....	26.5	32
Suffolk, Va., to—			
New York, N. Y.....	Atlantic Coast Line; Seaboard Air Line; Southern.....	24	26.5
Bayonne, N. J.:			
C. of N. J. delivery.....	Atlantic Coast Line; Seaboard Air Line.....	24	26.5
Pa. delivery.....	do.....	24	21
Emporia, Va., to—			
Babbitt, N. J.....	Atlantic Coast Line.....	30	36
Albany, N. Y.....	Southern.....	26.5	36
Waterbury, Conn.....	do.....	36	40
Reading, Pa.....	do.....	36	28.5
Rahway, N. J.....	do.....	36	33.5
Marion, S. C., to—			
New York, N. Y.....	Seaboard Air Line.....	37.5	40
Constable Hook, N. J.....	do.....	37.5	36
Petersburg, Va., to—			
New York, N. Y.....	do.....	29.5	34.5

Box shooks are the components of a box sawed to length from plain lumber and put up in bundles of 25 each. As estimated by respondents, the average carload of shooks weighs 70,000 pounds, while lumber from this territory averages about 52,000 pounds. The

volume of movement from the south to eastern points is approximately 8,000 or 9,000 cars a year.

The originating points affected are the principal producing points of box shooks in this territory. New York harbor points and points contiguous thereto are the largest consuming centers. The oil refineries in that vicinity are particularly large users. Any large concern that requires boxes is ordinarily a buyer of box shooks. It is admitted by respondents that practically every large consumer of box shooks in the territory covered by this suspension probably enjoys some reduced rates on shooks.

As shooks are a lumber product and quite generally move at lumber rates respondents assert that there is no transportation or commercial reason why the general practice should be deviated from as to these points of origin. They contend that to New York and other water-competitive points the rates on box shooks are subnormal in that they are below the depressed water-competitive rates on lumber, and to other points that they are below the normal basis. In the successive rate increases box shooks have been increased in the same manner as lumber rates. Partly in justification of the proposed increased rates respondents assert the need for increased revenues of the carriers participating in this traffic, but no estimate of the additional revenue which would result from the increased rates was furnished. But two instances of requests from points of origin for reductions below the lumber rates were cited. It was further testified that demand had been made by shippers at destination points, but these requests were apparently for further reductions of the specific box-shooks rates which they already enjoyed. In support of their action respondents point to the fact that the specific rates on shooks from Norfolk have been withdrawn and that the Norfolk & Western Railway, which previously published rates on box shooks, now has placed them on the lumber basis. Respondents' main reliance is upon our decision in *Rates on Lumber and Lumber Products*, 52 I. C. C., 598, in which we included box and crate material, including box shooks, among the lumber articles as to which the carriers were advised that they should observe as maxima the rates on lumber. Aside from the heavier loading of box shooks in this territory there is no transportation characteristic which would justify lower rates on shooks than on lumber. Protestants can not be said to dispute the correctness of the principle that box shooks should take the lumber rates if the lumber rates are reasonable and nonprejudicial. Their attack is mainly on the lumber-rate adjustment. Respondents' only answer to this contention is that the lumber rates are not in issue. Broadly speaking, they assert that we should assume that the lumber rates are reasonable, and that

as shooks should take the lumber rate from a transportation and classification standpoint, we should not condemn the entire proposed adjustment because of certain alleged maladjustments stressed by protestants, which respondents claim are relatively few in number.

Exhibits introduced on behalf of the Seaboard Air Line, the only originating carrier represented at the hearing, show that specific rates on box shooks are published from 12 originating points on that line and that few increases will result, these mainly to New York. It shows that certain fourth section departures will be removed, and attempts to show that the rates to New York, Pennsylvania, and Central Railroad of New Jersey deliveries, and to Bayonne, Constable Hook, and Communipaw, N. J., Central Railroad of New Jersey deliveries, will be aligned with rates to Jersey City, N. J., Port Ivory, N. Y., and other near-by cities. The later comparisons, however, omit the lower rates which will apply for Pennsylvania deliveries at Bayonne, Constable Hook, and Communipaw. The tariffs further disclose that relatively few rates varying from the lumber rates are published from points on the Seaboard as compared with the rates published from points on the Atlantic Coast Line and the Southern.

In *Water Competitive Rates on Lumber, supra*, the carriers proposed to increase the water-competitive rates on lumber to the normal basis but after hearing we found that the proposed rates had not been justified. Departures from the long-and-short-haul provision of section 4 of the act, protected by appropriate applications, occur at destinations intermediate to water-competitive points to the same extent as prior to our decision in that case. Protestants contend that our decision in effect condemned the application of the normal basis at intermediate destinations. However, the fourth section applications have not been heard. As a general proposition, fourth section departures also exist in the present rates on box shooks.

Aside from the fourth section departures, the protestants contend that the proposed adjustment will result in serious discriminations between destinations. The present and proposed rates from Emporia, Va., to Babbitt, N. J., a consuming point of shooks located on the Erie northwest of Jersey City, are 30 and 36 cents, respectively; to Bayonne, on the Pennsylvania, adjoining Jersey City on the south, the present rate is 25.5 cents and the proposed rate 26.5 cents. A similar illustration is offered with respect to Undercliff, N. J. Protestants further object to the differences in rates for different deliveries in the same cities, particular reference being made to Bayonne. In so far as revealed by this record there are no operating conditions which should create such wide divergencies as here shown.

A most serious consideration in so far as the shook industry is concerned is the disturbance of relationships between producing points. The present spread at New York between Emporia, 406 miles, and Suffolk, 380 miles, is 2.5 cents. The proposed spread is 5.5 cents. The increased spread, estimated by protestants to amount to \$23 a car, is claimed to be sufficient to necessitate the removal of the plants at Emporia to Suffolk or some other seaport town. The investment at Emporia represents \$1,500,000, and no lumber is shipped from that point. Another illustration of the effect the proposed rates will have on the Emporia producer is shown in the rates to Bayonne. The rate from Emporia for Pennsylvania delivery would be increased 1 cent while the Suffolk rate would be decreased 3 cents. Again, the present and proposed rates from Franklin, Va., to New York, 399 miles, are 23.5 and 26.5 cents. The proposed rates will increase the spread between Franklin and Emporia from 3 to 5.5 cents.

Comparisons were also submitted by protestants of present and proposed rates on box shooks between selected points and other rates for comparable distances, the majority of which apply at present on both box shooks and lumber. The one best illustrative of protestants' objections compares the present rate of 26.5 and proposed rate of 36 cents from Emporia to Williamsport, Pa., 416 miles, Wilkes-Barre, Pa., 432 miles, and Middleburg, Pa., 379 miles, with 19 water-competitive rates between other points and four rates from Cairo, Ill., to Ohio and Indiana destinations. The averages, present and proposed, of these 23 rates are 25.3 and 25.4 cents, respectively, for an average distance of 410 miles. As typical of the water-competitive points, Bayonne may be selected. The averages, present and proposed, of the rates from Emporia for four deliveries in that city are 26.3 and 29.3 cents, respectively, average distance 416 miles; the averages, present and proposed, of 10 water-competitive and 2 central-territory rates are 23.8 and 23.7 cents, respectively, for 393 miles. Further comparisons are submitted of the rates proposed with rates shown for comparative purpose in our report in *Water Competitive Rates on Lumber, supra*. Protestants' comparisons are in large part based on rates from Emporia, located on the Atlantic Coast Line and the Southern, neither of which was represented at the hearing. The reasons which might justify the proposed basis of rates from points on these lines are therefore largely unexplained. Chase City and South Hill, Va., are said by protestants to be as seriously affected as Emporia.

In *Rates on Lumber and Lumber Products, supra*, we said:

In this connection attention should be called to the rate relationship between lumber and such articles as logs, ties, bark, box material, box shooks, and the

like. The contention is made that these articles should take lower rates than lumber, and in many cases lower rates prevail at the present time. Our findings herein do not justify an increase in the rates on these articles.

By the above and other expressions in this report we clearly indicated that it was our intention to require in connection with rates on articles increased to the lumber basis a prior consideration by the carriers of the propriety of the lumber rates. This has not been done. We can not agree with the position taken by respondents, which, carried to its logical conclusion, is that a presumption of reasonableness attaches to the proposed rates on box shooks because they are to be made equal to the lumber rates. Many of the increases are substantial. Long-standing relationships of rates between competing points will be disturbed at a time when the industry is seriously depressed. The record is inadequate to warrant an attempt at a proper alignment.

We find that the proposed schedules have not been justified. An order will be entered requiring their cancellation and discontinuing this proceeding.

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INVESTIGATION AND SUSPENSION DOCKET No. 1303.

RATES ON ASPHALT FROM GULF PORTS TO STATIONS
ON THE NASHVILLE, CHATTANOOGA & ST. LOUIS
RAILWAY.

Submitted July 22, 1921. Decided November 7, 1921.

Increased rates on asphalt, in carloads, from Gulf ports to stations on the main line and branches of the Nashville, Chattanooga & St. Louis Railway east of Nashville, Tenn., proposed in supplements Nos. 11 and 12 to the tariff of F. L. Speiden, agent, I. C. C. No. 402, found not justified. Suspended schedules in said supplements ordered canceled.

Frank W. Gwathmey for Nashville, Chattanooga & St. Louis Railway.

C. A. Talley for New Orleans Refining Company, Incorporated, Standard Oil Company of Louisiana, and Sinclair Refining Company of Louisiana.

SUPPLEMENTAL REPORT OF THE COMMISSION.

DANIELS, *Commissioner*:

In our report in *Rates to, from, and between Points South of Ohio River*, 64 I. C. C., 107, dealing with the class rates under suspension in this proceeding we referred to a number of schedules proposing changes in commodity rates to, from, and between points south of the Ohio River including the Mississippi Valley, to become effective March 1, 1921, which had been suspended. Included among these were commodity rates on asphalt published in supplement No. 4 to tariff I. C. C. No. 402, of F. L. Speiden, agent, from the Gulf ports to Mississippi River points and Ohio River crossings and various other points in southern territory, including local and branch-line points on the Nashville, Chattanooga & St. Louis Railway, hereinafter referred to as the N., C. & St. L. This supplement was published to become effective March 1, 1921, but was successively suspended to July 28, and subsequently postponed voluntarily by the carriers until November 28, 1921. Rates will be stated in cents per 100 pounds.

Pursuant to an agreement reached at the hearing, the proposed rates on asphalt in carloads from New Orleans, La., and other Gulf ports to Ohio River crossings and Memphis, Tenn., were withdrawn.

and in lieu thereof rates acceptable to the protestants were published in new schedules to become effective June 25, 1921, as follows:

	To Ohio River crossings.	To Memphis.
	<i>Cents.</i>	<i>Cents.</i>
Old rate.....	24	¹ 25. 5
Suspended rate.....	35. 5	26
Agreed rate.....	30. 5	¹ 25. 5

¹ Class A.

This proposed rate to the Ohio River crossings was observed as maximum at intermediate points except in the instance hereinafter referred to.

The rate of 30.5 cents was also published to Nashville, Tenn., and all stations on the N., C. & St. L. west thereof, and south of Columbia, Tenn., to and including Attalla, Ala. At the same time rates were published in supplements Nos. 11 and 12 to agent Speiden's tariff I. C. C. No. 402 to stations on the main line and branches of the N., C. & St. L. east of Nashville, which are not only higher than the rates to Nashville and the Ohio River, but are also higher than the rates, published in supplement No. 4, which were suspended originally. However, they represent substantial reductions from the existing rates which are on the class-A basis.

Generally speaking, the proposed rates to these main-line stations east of Nashville are made by the addition of an arbitrary amount to the rate to Nashville or Chattanooga, Tenn., while the rates to branch-line points are constructed by adding arbitraries, graded according to distance, to the rates to the main-line junction points. For example, the proposed rate to main-line points between Chattanooga and Nashville is 40.5 cents, made by adding to the 30.5-cent rate to Chattanooga the 5-mile local rate of 10 cents from Chattanooga. The rate situation at present and as changed by the rates formerly and now proposed may be illustrated by the following:

From New Orleans and Gulf ports to Tullahoma, Tenn.:

	<i>Cents.</i>
Present class rate.....	59. 5
Commodity rate formerly proposed in supplement No. 4.....	36
Commodity rate now proposed in supplements Nos. 11 and 12.....	40. 5

Upon protests from various asphalt interests the proposed rates in supplements Nos. 11 and 12 to stations on the main line and branches of the N., C. & St. L. east of Nashville were successively suspended until November 22, a further hearing was held, and the question of their reasonableness and propriety is before us for determination in this proceeding. Other rates on asphalt, including the 30.5-cent

rate to Nashville and Ohio River crossings published to become effective at the same time, were not suspended and have been in force since June 25, 1921.

The stations on the N., C. & St. L. between Chattanooga and Nashville are the only points on the main line of that company to which the rates proposed exceed the rates to Nashville and the Ohio River crossings. In explanation of this condition the principal witness for the respondents testified that traffic to Nashville and the Ohio River does not route via Chattanooga in connection with the N., C. & St. L., and being nonintermediate stations, the carriers were not required by the provisions of the fourth section to observe the rates to Nashville and the Ohio River as maximum rates to the said points.

This testimony is not supported by the tariff containing the rate from New Orleans and other Gulf ports to Nashville and the Ohio River crossings. On the contrary, that schedule is concurred in by the N., C. & St. L. without any restriction against the routing of traffic via Chattanooga and that line. Stations on the main line of that company between Chattanooga and Nashville are therefore directly intermediate to those points and rates to such intermediate points could not lawfully be higher than the rate to Nashville under our finding in *Murfreesboro Board of Trade v. L. & N. R. R. Co.*, 55 I. C. C., 648. This tariff also provides that the rates from New Orleans and other Gulf ports to Nashville and the Ohio River were published by authority of rule 77 of Tariff Circular 18-A and are therefore subject to the conditions of that rule. These make it obligatory upon the respondents, upon request from any intermediate point, to establish a rate to such point not exceeding the rate to Nashville. In view of these facts the publication of higher commodity rates to points on the main line of the N., C. & St. L. between Chattanooga and Nashville than the rates applicable over the same route to Nashville and Ohio River crossings, after having published commodity rates to the latter points by authority of rule 77 of Tariff Circular 18-A, not only produced a situation in contravention of the fourth section, but constituted a breach of the only condition of that rule under which it may be used as authority for the publication of commodity rates to more distant points that are lower than the rates applicable to intermediate points.

The proposed rates to main-line points on the N., C. & St. L. between Nashville and Chattanooga are, therefore, clearly in violation of the fourth section and unlawful and should be canceled and rates established in lieu thereof which will not exceed the rates to Nashville.

The rates proposed to branch-line points on the N., C. & St. L. east of Nashville are from 10 to 22 cents higher than the rates published to Nashville, and to Cincinnati, Ohio, and other Ohio River crossings. For example, the rate from New Orleans to Sparta, Tenn., on the Sparta branch of the N., C. & St. L., 587 miles from New Orleans, via the short line, is 49.5 cents as compared with 30.5 cents from New Orleans to Cincinnati for the following distances: Short line, 834 miles; via Chattanooga and the N., C. & St. L. and its connections, 943 miles; and via Jackson, Tenn., and the N., C. & St. L. and its connections, 891 miles. The distance to other branch-line points on the N., C. & St. L. is generally less than the distance to Sparta.

The respondents sought to justify some of the proposed increased rates upon the ground that they were constructed on the basis suggested by us in *Murfreesboro Board of Trade v. L. & N. R. R. Co.*, *supra*, wherein we held that through rates to Murfreesboro, Columbia, Dickson, Gallatin, Lebanon, and Watertown, Tenn., when made through Nashville from various points of origin, should not exceed the rate contemporaneously maintained to Nashville plus 75 per cent of the contemporaneous local rates beyond. In that case we were dealing with the entire adjustment of rates to the above-mentioned points and the basis referred to was prescribed merely as a maximum basis, and is not to be construed as an approval of rates made on that basis which, in the light of other circumstances or conditions, may be shown to be unjust and unreasonable or otherwise in contravention of the provisions of the act. They also contended that the rates contained in supplement No. 4 had been published through error and that the rates published in supplements Nos. 11 and 12 were the rates which they had intended to publish.

The principal justification offered by the respondents in support of the proposed increased rates was that they compare favorably with rates for similar distances from New Orleans to points in Alabama, Georgia, and Tennessee, and this was illustrated by an exhibit in which the proposed rates were contrasted with rates to the latter points. It is, however, more appropriate to compare the proposed rates with those which have been established to Nashville, Chattanooga, and the Ohio River crossings and other points on or reached over the lines of the principal respondent and its connections. The respondents have established a rate on asphalt from New Orleans to Ohio River crossings, Cairo, Ill., to Cincinnati, inclusive, of 30.5 cents. The short-line distances to these crossings range from 550 miles at Cairo to 834 miles at Cincinnati. The distance from New Orleans to Cincinnati over the Illinois Central to Jackson, Tenn., N., C. & St. L. to Nashville, and the Louisville & Nashville

beyond, is 891 miles. As stated above, the short-line distance from New Orleans to Sparta, an important point on the Sparta branch, and in most instances farther removed from New Orleans than are other branch-line stations on the N., C. & St. L., is 587 miles. In all instances the distances to these branch-line points are less than the average distances from New Orleans to the Ohio River crossings. Without expressing any opinion upon the reasonableness of the rate to the Ohio River crossings, there is nothing in this record to justify a finding that rates to branch-line points on the N., C. & St. L. for distances of from 250 to 300 miles less than the distance to Cincinnati should exceed, to the extent proposed in supplements Nos. 11 and 12, the rate to that point and to stations on the main line of that company, now in effect, or which the respondents must publish upon request under rule 77 of Tariff Circular 18-A.

We find that the respondents have not justified the increased rates proposed in supplements Nos. 11 and 12 to agent Speiden's tariff I. C. C. No. 402, on asphalt from Gulf ports to stations on the main line and branches of the N., C. & St. L. east of Nashville. An order will be entered requiring the cancellation of the suspended schedules in said supplements, but respondents will be expected to revise immediately the rates to main-line stations on the N., C. & St. L. east of Nashville in accordance with the provisions of the fourth section, so that they will not exceed the rate to that point.

INVESTIGATION AND SUSPENSION DOCKET NO. 1362.

DECREASED FREE TIME ALLOWANCE AT PORTS ON
TRAFFIC FROM CALIFORNIA.

Submitted October 15, 1921. Decided November 2, 1921.

Proposed reduction from five days to 48 hours in free time allowed at California ports on freight originating in California, except within the switching limits of the port of exit, and consigned to certain destinations in this and foreign countries reached by water lines, found not justified when for application to shipments moving in interstate or foreign commerce. Suspended schedules ordered canceled.

R. C. Munholland and *E. W. Camp* for respondents.

Seth Mann for San Francisco Chamber of Commerce.

I. A. Pederson for Board of Harbor Commissioners of Los Angeles.

E. W. Hollingsworth and *R. T. Boyd* for Oakland Chamber of Commerce.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND ESCH.

BY DIVISION 3:

By schedules filed to become effective July 15, 1921, respondents propose to reduce the free time at California ports on freight traffic originating at points in California, except within the switching limits of the port of exit, and consigned to points in countries other than Asia, Australia, the Fiji Islands, the Philippine Islands, New Zealand, the Hawaiian Islands, and points beyond, Alaska and points on and tributary to the Yukon River, British Columbia north of Queen Charlotte Sound, Mexico, Central America, and South America, from "five days from first seven a. m. after arrival of car or notice of carrier's readiness to deliver car at port of exit" to "48 hours from first seven a. m. after notice of arrival or of carrier's readiness to deliver car at port of exit has been given or sent." The territory of destination affected is Europe, including the British Isles, Africa, the Atlantic coast of America north of Mexico, and the Pacific coast of America south of Queen Charlotte Sound and north of Mexico. The ports where the change is proposed are San Francisco, Oakland, Los Angeles, including Wilmington and San Pedro, Albion, South Bay, which is the port of Eureka, and San Diego. The proposed

change does not apply on traffic originating at points in western states other than California. Upon protest of the San Francisco Chamber of Commerce and other interested parties, the schedules were suspended until December 12, 1921. Our jurisdiction herein does not extend to traffic the movement of which is not beyond the state of California.

The present rule has been in effect since 1908. Prior to that time unlimited free time was allowed. Respondents assert that the change is intended primarily in the interest of car conservation and the elimination of port congestion.

The change in rule was limited to California points of origin, because a majority of such shipments originated within comparatively short distances of the ports, involving short rail hauls to the ports, and the shippers could keep in close touch with them. The following statement shows the number of revenue cars intended for destinations here under consideration, which moved from California points of origin within distances of 50, 100, 150 miles, or more, respectively, to San Francisco, Oakland, and Los Angeles, during the 18 months ended June 30, 1921:

Distance.	To San Francisco and Oakland.				To Los Angeles.			
	1920 (calendar year).		1921 (first six months).		1920 (calendar year).		1921 (first six months).	
	Number.	Per-centage.	Number.	Per-centage.	Number.	Per-centage.	Number.	Per-centage.
1 to 50 miles.....	2,750	62	1,661	49	820	80	1,826	89
50 to 100 miles.....	567	12	666	20	63	7	41	2
100 to 150 miles.....	760	15	576	17	97	9	76	4
Beyond 150 miles.....	517	11	485	14	37	4	112	5

These figures reflect considerable variation in distance between the territory of origin and the ports compared. Some of the hauls were in excess of 500 miles.

Our attention is called to the facility with which equipment may be secured for loading at interior points and the dependability of the rail service to the ports. An exhibit introduced by respondents shows that in July, 1921, shipments from 100 California points of origin to San Francisco for water movement beyond averaged 1.1 days in rail transit. This exhibit is susceptible of criticism as being merely representative of the movement in one month to one port. Moreover, it reflects a marked variation in the transit time actually consumed from the same points of origin, and shows that an appreciable number of shipments were en route materially in excess of two days.

In the subjoined statement the average detention of cars at California ports, together with accrued demurrage, is shown for the calendar year 1920 and the first six months of 1921:

Destination and period.	Cars held—						
	0 days.	1 day.	2 days.	3 days.	4 days.	5 days.	More than 5 days.
Pacific coast:							
Calendar year 1920:							
Number of cars.....	581	1,660	1,571	1,114	751	405	195
Percentage.....	9.26	26.45	25.03	17.74	11.96	6.45	3.11
First six months, 1921:							
Number of cars.....	1,205	657	581	355	191	101	58
Percentage.....	38.27	20.86	18.45	11.27	6.07	3.21	1.87
Atlantic coast:							
Calendar year 1920:							
Number of cars.....	31	196	251	168	92	46	25
Percentage.....	3.83	24.23	31.03	20.77	11.37	5.69	3.08
First six months, 1921:							
Number of cars.....	106	314	553	250	123	93	18
Percentage.....	7.28	21.55	37.95	17.16	8.44	6.38	1.24
Transatlantic:							
Calendar year 1920:							
Number of cars.....	40	243	277	113	87	66	18
Percentage.....	4.74	28.79	32.82	13.38	10.31	7.82	2.14
First six months, 1921:							
Number of cars.....	75	304	416	228	94	75	118
Percentage.....	5.76	23.39	32.00	17.54	7.23	5.76	8.32
Totals:							
Calendar year 1920:							
Number of cars.....	652	2,099	2,099	1,395	930	517	238
Percentage.....	8.22	26.47	26.47	17.59	11.73	6.52	3.00
First six months, 1921:							
Number of cars.....	1,386	1,275	1,550	833	408	269	185
Percentage.....	23.47	21.59	26.24	14.10	6.91	4.55	3.14

Destination and period.	Total detentions.	Total time held.	Average detention per car.	Accrued demurrage.
Pacific coast:	<i>Cars.</i>	<i>Days.</i>	<i>Days.</i>	
Calendar year 1920.....	6,277	14,760	2.35	\$1,836
First six months, 1921.....	3,149	4,615	1.46	411
Atlantic coast:				
Calendar year 1920.....	809	2,048	2.53	363
First six months, 1921.....	1,457	3,236	2.22	57
Transatlantic:				
Calendar year 1920.....	844	1,946	2.31	126
First six months, 1921.....	1,300	3,276	2.52	498
Totals:				
Calendar year 1920.....	7,930	18,754	2.36	2,325
First six months, 1921.....	5,906	11,127	1.88	966

An analysis of these figures by months reflects more pronounced differences in the detention periods as between the California ports. During the calendar year 1920 the average detention at Oakland on Pacific coast traffic varied from 1 day in September to 6.45 days in October, 6 of the 12 months showing detention of 3 days or more. During the same period the average detention at San Francisco on Atlantic coast traffic varied from 1.72 days in August and November to 7.65 days in June, four months being in excess of 3 days and three months in excess of 4 days. During the same period the average detention at Los Angeles on transatlantic traffic

varied from 1.51 days in October to 5.43 days in March, seven months being equal to or in excess of 3 days, and five months being equal to or in excess of 4 days.

Practically all docks at San Francisco are served by the State Board of Harbor Commissioners of San Francisco Belt Railroad, hereinafter termed the Belt Line. Upon the arrival of carload shipments at that port notices of arrival are sent to the consignees by the line-haul carrier. The Belt Line tariff requires as a prerequisite to delivery at docks served by it that written request to deliver the shipments be furnished to the line-haul carrier by the consignee or steamship company. Upon receipt of this request the line-haul carriers place the cars on the Belt Line interchange tracks, where they are held until written request is furnished to the Belt Line by the steamship company to place them at indicated docks. There are five "open docks" at San Francisco, used by coastwise steamers, to which cars are moved by the Belt Line without written order.

Respondents contend that traffic moving from the ports is not entitled to free time in excess of that applicable on domestic shipments. It is clear from the record that detention at ports is not ordinarily intended by shippers, steamship companies, or respondents, and when it occurs is not of material benefit to them. The circumstances and conditions which are controlling in the case of traffic moving through ports are substantially dissimilar from those which obtain in connection with domestic traffic. Many of the factors which tend to delay traffic intended for ocean movement do not exist in the case of domestic traffic.

At San Francisco, the average dock is capable of accommodating about 6,000 tons of freight. Where steamers operate in both directions it is necessary to divide this space. The steamship lines accept freight 10 days in advance of scheduled sailing, and the dock is frequently congested before the steamer is in a position to load its cargo. When the capacity of the dock is reached receiving ceases until the vessel begins loading. To meet this situation shippers usually time their shipments so that they should reach the dock when the ship is able to receive them. Delays in rail transportation to the port, belated delivery to dock, the uncertainties of the sea, necessary changes in sailing dates of steamers, and other equally disturbing factors result in car detention at ports.

Protestants deny that the proposed rule will increase the efficiency of movement to and from the docks; they urge that its approval by us will merely result in increased cost of movement through the ports by the imposition of additional demurrage charges. They call attention to the fact that at least five days are generally granted

at our principal ports, both on the Atlantic and the Pacific, upon all export traffic, and that on coastwise traffic five days are commonly allowed. At Portland, Oreg., Tacoma, and Seattle, Wash., five days are allowed on export traffic, and while on coastwise traffic through these ports the limit is 48 hours there is no limitation as to the interior point of origin.

Respondents urge that the destinations described were selected because they were served by a greater number of steamship lines with more frequent and dependable sailings than other ports. But the sailings from San Francisco for the Orient are greatly in excess of those for Atlantic ports, and no corresponding reduction in free time is proposed in connection with transpacific traffic. Nearly all of the traffic here under consideration moves over water routes which are wholly or partly competitive with transcontinental rail carriers serving Pacific coast ports. The reduction in free time sought, if allowed, will have the effect of restricting the service incident to the traffic to Atlantic ports moving by competitive water routes.

We find that respondents have not justified the proposed schedules in so far as they are intended for application to shipments moving in interstate or foreign commerce. An order will be entered requiring their cancellation to the extent indicated, and discontinuing this proceeding.

64 I. C. C.

No. 11442.

TRAFFIC BUREAU OF DOUGLAS CHAMBER OF
COMMERCE AND MINES

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted July 11, 1921. Decided November 3, 1921.

1. Class and commodity rates from points on lines of defendants in California to Douglas, Ariz., found not unreasonable or unjustly discriminatory.
2. Class and commodity rates from points in California on lines of defendants to Douglas, found unduly prejudicial to the extent that they exceed corresponding rates contemporaneously in effect from the same points of origin to Bisbee, Ariz., and to certain cross-country points on the Southern Pacific in Arizona and New Mexico.
3. Commodity rates from points on lines of defendants in Oregon and Washington, and points basing thereon, to Douglas, applicable via California junctions, found unduly prejudicial, to the extent that they exceed corresponding rates contemporaneously in effect via California junctions from the same points of origin to El Paso, Tex., and Bisbee.

E. R. Raumaker for complainant.*F. C. Tockle* for El Paso Chamber of Commerce; *Roland Johnston* for Traffic Bureau, Chamber of Commerce, Phoenix, Ariz.; and *B. D. Woodward* for Murray & Layne Company, interveners.*J. L. Stewart, Boyle & Pickett, E. W. Camp, G. H. Baker, Fred H. Wood, Elmer Westlake, and C. W. Durbrow* for defendants.

REPORT OF THE COMMISSION.

DIVISION 4, COMMISSIONERS MEYER, DANIELS, EASTMAN, AND POTTER.
EASTMAN, *Commissioner*:

No exceptions were filed to the report proposed by the examiner. We have reached conclusions differing but slightly from those which he recommended.

Complainant is an organization of shippers and receivers of freight located at and in the vicinity of Douglas, Ariz. It alleges that the class rates, and commodity rates, except on fresh fruits and vegetables, from points on the lines of defendants in California,

Oregon, Washington, Idaho, Montana, Utah, Nevada, and British Columbia to Douglas are unjust, unreasonable, unjustly discriminatory, and unduly prejudicial. The Murray & Layne Company and the Traffic Bureau, Chamber of Commerce, Phoenix, Ariz., intervened on behalf of complainant. Petitions of intervention on behalf of defendants were filed by the El Paso Chamber of Commerce and by the El Paso Sash & Door Company. The latter, however, did not participate in the hearing. We are asked to prescribe reasonable and nonprejudicial rates for the future. Rates herein are stated in amounts per 100 pounds, and do not include the general increases of 1920.

Complainant's contentions are that the importance of Douglas, as the jobbing and mining center of southern Arizona and New Mexico and the gateway to ore regions in Mexico, together with its location west of El Paso, Tex., entitle it to lower rates than El Paso from points in California; that, being on the main line of the El Paso & Southwestern, its rates should not exceed those maintained to Bisbee, Ariz., a branch-line point near by; that from San Francisco, Los Angeles, and points grouped therewith its rates are unduly high in comparison with the rates to Tucson, Willcox, and Bowie, Ariz., and to Deming, N. Mex.; that from points in Oregon, Washington, Idaho, Montana, and British Columbia, hereinafter referred to as the northwest, its rates should not exceed those in effect to El Paso; that joint rates should be established from all points in California on the Atchison, Topeka & Santa Fe, hereinafter called Santa Fe, to Douglas via Colton, Calif., or Phoenix, Ariz.; and that there are no circumstances or conditions which justify the publication of joint rates to El Paso and not to Douglas.

While the class and commodity rates from points in the northwest were put in issue, complainant stated at the hearing that if commodity rates were established from that territory to Douglas on the El Paso basis, but not to exceed the rates contemporaneously maintained to Bisbee, this phase of the complaint would be satisfied. Accordingly the class rates from the northwest will not be considered.

Douglas is situated in the extreme southeastern part of Arizona near the Mexican border on the main line of the El Paso & Southwestern, 217 miles west of El Paso and 124 miles southeast of Tucson, the western junction of that carrier with the Southern Pacific. It is 22 miles east of Osborn, Ariz., from which point a branch line of the El Paso & Southwestern extends north 7 miles to Bisbee. The Southern Pacific is the short line from Tucson to El Paso. The line

of the El Paso & Southwestern is somewhat longer, as it dips down to the Mexican border. Douglas is in competition with Tucson and Bisbee, and with Willcox, Bowie, and other cross-country points on the Southern Pacific, 60 to 80 miles distant by air line, for the trade of the intervening territory.

In 1888 the Arizona & South Eastern was constructed from Bisbee to Fairbank, Ariz., and about 1894 it was extended to Benson, Ariz., where connection was made with the Southern Pacific. Some years later the Southwestern Railroad of Arizona was built from Don Luis, Ariz., to Douglas, thus providing a through route from Benson to Douglas. In 1901 these lines were consolidated under the name of the El Paso & Southwestern, which in 1902 was extended into El Paso. In the same year the right of way was changed in such a way as to make Bisbee a branch-line point.

In 1901 rates between Douglas and California points were made by double combination on Benson and Don Luis. In 1903 joint class and commodity rates were established between points in California and stations on the El Paso & Southwestern, based on the combination of locals on Fairbank. The class rates were uniformly 15 cents higher to Douglas than to Bisbee. This basis continued until 1913 when the El Paso & Southwestern was extended into Tucson, thus providing a new route for the interchange of traffic with the Southern Pacific, at which time, with a few exceptions, rates applicable from California points to El Paso via the Southern Pacific were met by the El Paso & Southwestern, and held as maxima at Douglas and all other intermediate points, Tucson to El Paso.

While rates from the east are considerably higher to Douglas than to El Paso, rates from California are either the same to both points or slightly lower to Douglas, and certain rates from the northwest are considerably higher to Douglas than to El Paso. Complainant contends that Douglas is entitled to the same advantage on traffic from the west that El Paso has on traffic from the east, particularly in the case of the shorter hauls. While the Murray & Layne Company strongly supports this contention, the El Paso Chamber of Commerce urges that no changes of this character are warranted, since Douglas and El Paso have had practically the same rates from the west for several years, and business has become adjusted to these conditions.

Complainant compares the class rates from San Francisco and Los Angeles, representative California points of origin, to Douglas, with the corresponding rates to Tucson, Willcox, Deming, and El Paso, typical distributing points which compete with Douglas. Complainant's comparisons, together with class rates from the same points of

origin to certain other destinations near Douglas, are shown in the subjoined statement:

Haul.	Dis- tance.	Classes.									
		1	2	3	4	5	A	B	C	D	E
<i>San Francisco and group to—</i>	<i>Miles.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>
Tucson, Ariz.	971	237.5	196.5	171.5	142.5	116.5	116.5	95	81.5	75	65
Benson, Ariz.	1,020	269	225	200	167.5	137.5	137.5	114	99	90	76.5
Fairbank, Ariz.	1,038	269	225	200	171.5	141.5	141.5	115	99	90	77.5
Willcox, Ariz.	1,062	269	225	200	181.5	147.5	156.5	122.5	104	94	80
Bowie, Ariz.	1,085	269	225	200	181.5	147.5	159	126.5	104	96.5	81.5
Olga, Ariz.	1,094	269	225	200	181.5	147.5	159	130	104	97.5	82.5
Lordsburg, N. Mex.	1,135	269	225	200	181.5	147.5	159	134	104	100	87.5
Deming, N. Mex.	1,195	269	225	200	181.5	147.5	159	134	104	100	87.5
El Paso, Tex. ¹	1,233	294	250	200	181.5	147.5	159	134	104	100	87.5
Do. ²	1,312										
Douglas, Ariz.	1,095	294	250	200	181.5	147.5	159	130	104	97.5	82.5
Bisbee, Ariz.	1,030	294	250	200	181.5	147.5	159	126.5	104	95	81.5
Osborn, Ariz.	1,073	294	250	200	181.5	147.5	159	126.5	104	95	80
<i>Los Angeles and group to—</i>											
Tucson, Ariz.	502	206.5	171.5	152.5	124	104	104	82.5	69	62.5	52.5
Benson, Ariz.	551	237.5	204	181.5	149	125	125	101.5	86.5	77.5	64
Fairbank, Ariz.	570	237.5	204	182.5	152.5	129	129	102.5	86.5	77.5	65
Willcox, Ariz.	593	237.5	204	182.5	167.5	135	144	110	92.5	81.5	67.5
Bowie, Ariz.	617	237.5	204	182.5	167.5	135	146.5	114	94	84	69
Olga, Ariz.	625	237.5	204	182.5	167.5	135	146.5	117.5	95	85	70
Lordsburg, N. Mex.	667	237.5	204	182.5	167.5	135	146.5	124	104	94	75
Deming, N. Mex.	726	237.5	204	182.5	167.5	135	146.5	129	104	94	75
El Paso, Tex. ¹	814	294	250	189	167.5	135	146.5	129	104	94	82.5
Do. ²	843										
Douglas, Ariz.	626	285	245	189	167.5	135	146.5	117.5	95	85	70
Bisbee, Ariz.	611	275	236.5	189	167.5	135	146.5	114	92.5	82.5	69
Osborn, Ariz.	604	272.5	234	189	167.5	135	146.5	114	92.5	82.5	67.5

¹ Via Southern Pacific.

² Via Southern Pacific and El Paso & Southwestern.

On traffic to the above points the San Francisco rate is blanketed over an origin territory about 400 miles in length, while the Los Angeles rate covers points within a radius of about 125 miles. Complainant not only contends that the rates to Douglas are too high from all points in these groups, but that greater reductions should be made from points in the eastern portion of the originating territory than from points in the western portion. This extensive grouping of points of origin gives interior points the benefit of many markets in Pacific coast territory. Moreover, any change in the basis to Douglas, such as is suggested, would result almost inevitably in a similar disturbance of the rates to many other points in Arizona and the southwest, which rates are not in issue here. The evidence of complainant as to the desirability of breaking up these origin groups is too slight to warrant findings of such far-reaching importance.

As the above table shows, destination points are also extensively grouped, rates from San Francisco and Los Angeles to El Paso being blanketed back, in many instances, to and beyond Douglas. The distance Los Angeles to Douglas is 74.2 per cent of the distance

Los Angeles to El Paso via Southern Pacific, Tucson, El Paso & Southwestern beyond, and 77 per cent of the distance over the direct line of the Southern Pacific, while the class rates from Los Angeles to Douglas range from 84.7 to 100 per cent of the rates to El Paso. From San Francisco the distances to Douglas are 83.5 and 85.4 per cent of the respective distances to El Paso, while the Douglas rates vary from 94.3 to 100 per cent of the El Paso rates. Complainant insists that the factor of distance should be given more weight in this destination adjustment. Defendants assert that the San Francisco-El Paso rates are depressed by the rates from St. Louis. There is little doubt but that the rates to El Paso are subject to certain competitive influences which do not affect the rates to Douglas.

Class rates from the San Francisco and Los Angeles groups are generally blanketed to points on the line of the Southern Pacific between Benson and Deming, the extent of the blankets varying with the different classes and narrowing as the lower classes are reached. The first five classes are grouped from San Francisco for average distances of about 240 miles, and from Los Angeles for average distances of about 215 miles. For example, from San Francisco the first-class rate is blanketed from Amole, Ariz., to Afton, N. Mex., a distance of 239 miles; from Los Angeles the first-class rate is blanketed from Amole to Carne, N. Mex., a distance of 199 miles. The mean point of the blankets is near Lordsburg, N. Mex., this point being 41 miles farther from the origin territory than is Douglas. From San Francisco, as will be noted from the foregoing table, the rates on classes D and E are higher to Lordsburg than to Douglas, while on the first two classes the reverse is true. The other classes are the same. From Los Angeles classes B, C, D, and E are higher to Lordsburg than to Douglas, while the first three classes are considerably lower. The intermediate classes, 4, 5, and A, are the same to both destinations. From both San Francisco and Los Angeles the first five classes are blanketed from Willcox to Deming, a distance of 133 miles. From Los Angeles classes 1, 2, and 3 are 47.5, 41, and 6.5 cents higher, respectively, to Douglas than to Lordsburg; and from San Francisco classes 1 and 2 are each 25 cents higher to Douglas. The defendants offered no explanation of these inconsistencies.

In the following statement the differences in the rates from California, Douglas under El Paso, and Los Angeles under San Francisco are compared with similar differences in connection with the rates to Lordsburg:

	Classes.									
	1	2	3	4	5	A	B	C	D	E
<i>From Los Angeles:</i>										
Douglas under El Paso.....	0	5	0	0	0	0	11.5	9	9	12.5
Lordsburg under El Paso.....	56.5	46	6.5	0	0	0	5	0	0	7.5
<i>From San Francisco:</i>										
Douglas under El Paso.....	0	0	0	0	0	0	4	0	2.5	5
Lordsburg under El Paso.....	25	25	0	0	0	0	0	0	0	0
<i>Los Angeles under San Francisco:</i>										
To Douglas.....	9	5	11	14	12.5	12.5	12.5	9	12.5	12.5
To Lordsburg.....	31.5	21	17.5	14	12.5	12.5	10	0	6	12.5

From the above comparisons it will be observed that the spread between the rates to Douglas and the rates to El Paso, where there is any spread, is greatest in the lower classes, which is contrary to accepted principles of rate making. The reverse is true of the Lordsburg rates. These discrepancies are reflected in the differences between the San Francisco and Los Angeles rates to Douglas. The distance to Douglas from San Francisco exceeds that from Los Angeles by 469 miles. To Lordsburg rates from Los Angeles range from 31.5 cents, first class, to nothing at class C under the San Francisco rates. Moreover, to stations on the El Paso & Southwestern, Tucson to Osborn, including Bisbee, the first-class rates from Los Angeles range from 19 to 31.5 cents under the corresponding rates from San Francisco. Defendants urge that rates from northern California to Douglas are affected by water competition between San Francisco and Los Angeles. However, this fact does not explain the inconsistency between the Douglas rates on the three highest classes and corresponding rates to comparable Southern Pacific and El Paso & Southwestern points. Water competition should affect like rates similarly to all points in the same general territory.

Complainant compares the revenues per ton-mile yielded by the first-class rates from San Francisco and Los Angeles to Douglas with earnings under the corresponding rates to Tucson, Willcox, Deming, and El Paso, as follows:

From—	To Tucson.	To Willcox.	To Douglas.	To Deming.	To El Paso.
	<i>Mills.</i>	<i>Mills.</i>	<i>Mills.</i>	<i>Mills.</i>	<i>Mills.</i>
Los Angeles.....	82.27	80.10	91.05	65.43	1 69.75 2 72.23
San Francisco.....	48.92	50.66	53.70	45.02	1 44.82 2 45.83

¹ Via El Paso & Southwestern.

² Via Southern Pacific.

The distances from California points to Douglas range from 500 to 1,200 miles. The haul to Douglas involves one additional line not

required in the movement to cross-country points on the Southern Pacific. Defendants contend that this fact alone is sufficient to warrant the higher basis at Douglas. They do not explain why this fact, if controlling, affects only a few of the higher classes, nor why the rates in some of the lower classes are less to Douglas than to Deming and certain other of the cross-country points. They offered no evidence to show that the added line to Douglas involves an increase in the cost of service over that to comparable Southern Pacific points, and the record discloses no other transportation conditions which would warrant the maintenance of higher rates to Douglas. As said in *Coakley v. Director General*, 59 I. C. C., 141, 144, "the mere fact that one haul is two-line and another one-line does not in and of itself justify a higher charge for the two-line haul." It is well established that for distances in excess of 500 miles the fact that the service is by two lines is largely negligible. *Pacific Creamery Co. v. S. P. Co.*, 42 I. C. C., 93, 96.

From the facts of record it seems clear that the rates to Douglas on classes 1 and 2 from the San Francisco group and classes 1, 2, and 3 from the Los Angeles group are unduly prejudicial to Douglas, to the undue preference of Willcox, Bowie, Deming, and other competing cross-country points on the Southern Pacific to which the corresponding class rates are blanketed.

Complainant's main contention as to commodity rates is that the location of Douglas, 217 miles west of El Paso, entitles it to rates proportionately lower than are contemporaneously applicable to El Paso. It shows that rates from the east on various commodities, including canned goods, sugar, and soap, are considerably higher to Douglas than to El Paso, and urges that the converse should be true on traffic from the west.

Commodity rates to Douglas are generally the same from both Los Angeles and San Francisco, and in some instances they apply also from Portland, Oreg. Except to points on the El Paso & Southwestern, the blankets of origin on certain commodities extend to Seattle, Tacoma, and other Washington points. The rates in many instances are blanketed, as to points of destination, practically across the country. Rates of 90.5 cents on canned goods and 87.5 cents on canned salmon are blanketed from Gila, Ariz., to the Atlantic seaboard; and the rate of \$1.065 on dried fish extends east from Maricopa, Ariz., in similar manner. Rates on canned milk, beans, sugar, and coffee are the same from San Francisco and Los Angeles to Douglas, El Paso, and beyond. In a few instances commodity rates from San Francisco and Los Angeles are graded to Douglas and other points in the same general territory.

From the numerous comparisons submitted it appears that the commodity rates from California to Douglas, while higher in some instances than those to competing points, are generally the same. As mining is the principal industry of this section, there is a considerable movement of mine timbers and high explosives from California to Bisbee and Douglas. The rate on mine timbers from Los Angeles is 27 cents to Bisbee and 32.5 cents to Douglas; from San Francisco the rate is 39 cents to Bisbee and 48.5 cents to Douglas. On high explosives the rate is \$2.43 from San Francisco to Douglas and \$2.365 to Bisbee. Obviously Douglas is at a disadvantage in the distribution of these commodities in competition with Bisbee. Similar adjustments obtain in connection with a few other commodities. The record shows that there are certain commodities, such as salt and rough timbers, which take higher rates from California to Douglas than to cross-country points on the Southern Pacific which compete with Douglas in the intermediate territory.

Defendants state that the rates to all points on the El Paso & Southwestern are made on the lowest combination of locals, the transcontinental rates being held as maxima to avoid fourth section violations, and this, they contend, gives that section better rates than it is rightfully entitled to. They deny any intention of favoring Bisbee over Douglas, and explain that the rate adjustment to Bisbee was made when it was a main-line point; that when Bisbee became a branch-line point, its rates were allowed to remain, in most instances, on the main-line basis. They urge that the length of time that the adjustment has been in effect justifies its continuance; that the rates to Bisbee are reasonable and should not be disturbed; and that the rates to Douglas, because of the greater distance, may reasonably be higher.

Traffic from the west destined to Bisbee must be switched out of main-line trains at Osborn or Don Luis and hauled over a branch line about 7 miles in length, with a maximum grade of 3 per cent. The altitudes of Osborn, Bisbee, and Douglas are 4,675, 5,300, and 3,966 feet, respectively. The haul from Osborn to Douglas is down grade practically all the way. From these facts it is clear that the additional distance of 15 miles, Douglas to Bisbee, does not warrant a difference in the rates from California for distances ranging from 500 to 1,200 miles. And the record discloses no good reason why in those few instances where higher rates apply to Douglas than to Lordsburg and other cross-country points taking the same rates, a like parity should not be brought about.

This same general situation obtains with respect to a number of commodity rates from the northwest, Bisbee, in such cases, being

accorded lower rates than Douglas. Furthermore, as joint rates are published from the northwest on certain commodities to El Paso via the Southern Pacific direct, and are not applicable in connection with the El Paso & Southwestern, it happens in these instances that the rates to Douglas, being on a combination basis, are higher. For example, from Seattle, Tacoma, and other northwestern points to El Paso, Southern Pacific points in Arizona and New Mexico, and points east thereof, the rates on canned goods are 90.5 cents, minimum 60,000 pounds, and \$1.065, minimum 40,000 pounds, while the rates to Douglas are 15 cents higher. From Anacortes, Bellingham, Blaine, and other Washington points the rate on canned salmon to El Paso is 87.5 cents. This rate is blanketed from Colton, Calif., to the Atlantic seaboard, being applicable to Tucson, Willcox, Bowie, and other Southern Pacific points which compete with Douglas, while to the latter point the rates are considerably higher, being made on Portland combination. The rates on various other commodities are similarly adjusted. As hereinbefore stated, complainant agreed that as to rates from the northwest its complaint would be satisfied if Douglas were accorded the El Paso basis, but in no case higher than the rates contemporaneously maintained to Bisbee, and we see no reason why, with respect to rates applying via California junctions, this adjustment should not be made.

Many of the commodity rates from the northwest to El Paso and transcontinental territory, however, apply only via Utah and Colorado junctions, and rates so limited do not apply to points west of El Paso. Complainant contends that all of these rates should be made to apply by way of California junctions and the El Paso & Southwestern, so that Douglas may have the benefit of the El Paso basis. No sufficient reason is shown of record for requiring the establishment of these rates to Douglas via California junctions.

Complainant submitted evidence intended to show that the application from California to Douglas of class rates on certain commodities, higher than commodity rates contemporaneously in force on like traffic from similar points of origin to transcontinental destinations east of Douglas produces violations of the long-and-short-haul clause of the fourth section of the act. Attention is also directed to the fact that the mixtures on certain traffic moving under commodity rates from California points to Douglas in mixed carloads, are restricted as compared with the mixtures permitted on similar traffic moving to points in transcontinental territory east of Douglas. These transcontinental commodity rates are published subject to rule 77 of Tariff Circular 18-A, which is a substantial compliance with the requirements of the fourth section. *Du Pont de Nemours & Co. v. Director General*, 55 I. C. C. 247.

Complainant compares the rates assailed with rates from Chicago, Kansas City, Denver, and other points to El Paso, from Pacific coast points to Utah common points, and between other points, for the purpose of showing the unreasonableness of the rates to Douglas. These comparisons, however, have little probative value, as they apply on traffic which in most instances is highly competitive and subject to influences not present in the movement from the Pacific coast to Douglas.

Complainant urges that the minimum weights applicable on certain commodities from California points to Douglas are unreasonable and unduly prejudicial because they are higher than those which apply on the same commodities between California and Denver, between California and Utah common points, and from Chicago, Denver, New Orleans, and other points to El Paso. The minimum weights under attack are also applicable from California to El Paso, Bisbee, and Southern Pacific cross-country points which are in competition with Douglas. No evidence was submitted as to the actual loading or other pertinent factors affecting the minima assailed or those compared; and no showing is made that Douglas is affected adversely by the difference in minimum weights.

The Santa Fe meets the Southern Pacific rates from California to Douglas via its circuitous route through Deming. Complainant contends that through routes should be established from points on the Santa Fe in California to Douglas, either via Santa Fe to Colton, Southern Pacific and El Paso & Southwestern beyond, or via Santa Fe to Phoenix, Arizona Eastern, Southern Pacific, and El Paso & Southwestern beyond. The principal reason advanced to support this request is that the time consumed in the movement via the Deming route is excessive. Complainant submitted a number of California originating points as representative, all of which have through routes and joint rates in connection with the Southern Pacific. Complainant was unable to name any California points from which joint rates do not apply to Douglas via the Southern Pacific over direct routes. The evidence on this point is meager and indefinite, and fails to support the contention that the through routes from California points to Douglas are not reasonably adequate.

No evidence was submitted to support the allegation under section 2 of the act.

It is clear that there is a closer geographical and economic relationship between Douglas, Bisbee, and cross-country points on the Southern Pacific than is reflected in some of the class and commodity rates from California, and in certain of the commodity rates from the northwest to those points, and that defendants' present rate ad-

justment to this extent unduly prejudices Douglas and unduly prefers Bisbee and certain Southern Pacific points. No sufficient evidence has been presented that the rates attacked are unreasonable, or that they are unduly prejudicial by reason of the fact that they are not lower than the corresponding rates to El Paso. This finding is confined to the strict issue before us and to the evidence of record and is not to be understood as direct or indirect approval of the adjustment under which certain commodity rates eastbound are blanketed from Arizona points all the way to the Atlantic seaboard.

Upon the record we find that the rates assailed are not unreasonable or unjustly discriminatory, but that the class rates from points on lines of defendants in California to Douglas are, and for the future will be, unduly prejudicial to the extent that they exceed or may exceed the class rates contemporaneously maintained from the same points of origin to Bisbee, Ariz., and to Lordsburg, N. Mex., and points on the Southern Pacific taking the same rates as Lordsburg; that the commodity rates, except on fresh fruits and vegetables, from said points in California to Douglas are, and for the future will be, unduly prejudicial to the extent that they exceed or may exceed the rates contemporaneously maintained on like commodities from the same points of origin to Bisbee, Ariz., and to Lordsburg, N. Mex., and points on the Southern Pacific taking the same rates as Lordsburg; that commodity rates, except on fresh fruits and vegetables, from points on lines of defendants in Oregon and Washington and points basing thereon, to Douglas, applicable via California junctions, are, and for the future will be, unduly prejudicial, to the extent that they exceed or may exceed the rates contemporaneously maintained on like commodities from the same points of origin to El Paso, Tex., and to Bisbee, Ariz. The foregoing finding should not be construed as covering rates from British Columbia, as no evidence is before us respecting the rates covering that portion of the haul within the United States.

An order will be entered in accordance with these findings.

No. 11704.

INDIANAPOLIS BOARD OF TRADE

v.

BALTIMORE & OHIO RAILROAD COMPANY ET AL.

Submitted July 2, 1921. Decided November 3, 1921.

Upon complaint attacking (1) the basis of charges applicable on grain originating at numerous points on the Lake Erie & Western milled or accorded certain other transit services at Indianapolis, Ind., and reshipped as such or as manufactured products to western termini of trunk lines, trunk line territory, Virginia cities, and related points, and (2) the failure of the tariffs to accord transit at Indianapolis in connection with the movement from and to certain of these points; *Held*: That the tariff provisions assailed are not shown to be unreasonable or unjustly discriminatory but that the relative adjustment at Indianapolis and Noblesville, Ind., results in undue prejudice to Indianapolis and undue preference of Noblesville. Undue prejudice and preference ordered removed.

L. E. Banta for complainant.

L. B. Day for defendants.

REPORT OF THE COMMISSION.

DIVISION 4, COMMISSIONERS MEYER, DANIELS, EASTMAN, AND POTTER.

MEYER, *Commissioner*:

No exceptions were filed to the report proposed by the examiner.

The complaint in this proceeding was filed by the Indianapolis Board of Trade in the interest of the Grain Exchange of Indianapolis, Ind., an organization maintained by various millers, elevator operators, and commission firms. It assails certain rates, rules, routes, and regulations applicable to the movement of grain originating at various points on the Lake Erie & Western Railroad, accorded transit or other services hereinafter described at Indianapolis, and subsequently forwarded as such, or as manufactured products, to (1) western termini of trunk lines, trunk line territory, and points taking the same rates or arbitraries over such rates, all hereinafter called eastern territory, and (2) Virginia cities and points taking the same rates or arbitraries over such rates, hereinafter called Virginia cities. The provisions of the tariffs governing the basis of charges on this traffic are alleged to be unreasonable, unjustly discriminatory, and unduly prejudicial, and with respect

to the traffic from certain of these origin points moving to Virginia cities, the tariffs are also attacked by reason of their failure to authorize a transit service at Indianapolis. Rates in this report will be stated in cents per 100 pounds and the Lake Erie & Western, which assumes the burden of the defense, will be called defendant.

Indianapolis is an important primary grain market with numerous mills and elevators and a government inspection bureau. A considerable quantity of grain, largely wheat and corn, is shipped to this point from the surrounding territory on the north and west, and the greater portion of that sold on the exchange is reshipped to eastern markets. Defendant's lines serve certain of this producing territory. The main line extends from Peoria, Ill., on the west to Sandusky, Ohio, on the east, a distance of approximately 413 miles. Indianapolis is the southern terminus of its Indianapolis & Michigan City division which extends to Michigan City, Ind., a distance of approximately 159 miles, intersecting the main line at Tipton, Ind., about 40 miles north of Indianapolis and 203 miles east of Peoria. The Cleveland, Cincinnati, Chicago & St. Louis, hereinafter called the Big Four, also operates a line between Indianapolis and Peoria and another between Indianapolis and Chicago, Ill., which lines intersect defendant's main line at Bloomington, Ill., and Lafayette, Ind., about 40 and 154 miles, respectively, east of Peoria.

With respect to traffic to eastern territory, the points of origin are stations north, west, and south of Tipton. For many years the direct-line through rates were available on this traffic when milled or accorded track reconsignment at Indianapolis, if moving out of that point over defendant's line, subject only to additional charges of 0.5 cent for milling and to reconsignment charges, if any, Indianapolis with respect to such movement being considered as located at Tipton. The track reconsignment authorized holding the cars in the yards and reforwarding after sale of the grain. However, in February, 1920, the Railroad Administration amended the tariffs and provided for an additional charge of 2.5 cents to cover the out-of-line or back-haul movement to and from Tipton. Moreover, application having been made by complainant for the extension of the transit service to include grain elevated at Indianapolis, this service was also authorized in connection with the through rates, plus the back-haul charge. On August 26, 1920, this additional charge was increased to 3.5 cents. As to this traffic, complainant asks us to require the carriers to continue the present transit and reconsignment services on the basis of the through rates and without the addition of the back-haul charge.

With respect to traffic to Virginia cities, the points of origin are stations south of Tipton and west of that point, to and including

Hustle, Ill. These points will hereinafter be called Indiana stations, in contradistinction to stations west thereof, hereinafter called Illinois stations. The record also contains some reference to stations north of Tipton but apparently these are not involved, and they will not be considered.

Defendant's tariffs have at no time authorized transit in any form at Indianapolis on grain from Indiana stations destined to Virginia cities, but "transit" as provided in Kelly's transit grain circular I. C. C. No. 59 is and for a number of years has been authorized on such traffic from Illinois stations, except Peoria and East Peoria, Ill., restricted to routing out of Indianapolis over specified routes. The Baltimore, Md., rate is the basis generally applied to Virginia cities from this territory and is observed in connection with defendant's direct route through Sandusky on traffic from its main-line stations, and likewise on traffic from Illinois stations moving by way of Indianapolis and specified routes beyond. However, from Indiana stations, the rates applying by way of Indianapolis are higher than the Baltimore rate by from 1 to 6.5 cents on grain and 1 to 6 cents on grain products, the rates from East Lynn, Ill., with one exception, being observed as minima. These rates are designated as "plussed rates." The excess over the ordinary basis increases as the distance from Indianapolis decreases and presumably the basis is employed on account of the out-of-line or back-haul movement or to protect defendant's revenues when it is deprived of the long haul. The short route from Indianapolis to Virginia cities is in connection with lines other than defendant's, but no testimony is offered as to the relative distances. As to Virginia cities traffic originating at Indiana stations and routed by way of Indianapolis, complainant asks for the same rates that apply in connection with defendant's direct route through Sandusky, and for the establishment of the same transit service at Indianapolis that now applies on traffic from Illinois stations.

Complainant relies largely upon the history of the rates prior to federal control. It also seeks to show that the rates assailed to eastern territory are unreasonable because they are from 1 to 4 cents higher than the aggregate of the local rates beyond Indianapolis, plus rates to that point based on a distance scale maintained by defendant for application in connection with certain out-of-route or back-haul movements. Under the restrictions of the tariffs these distance rates, in the absence of joint rates, may not be used as factors in the construction of combination rates to these destinations. Upon the facts shown, these rates are without significance in this proceeding.

Through rates maintained in connection with defendant's line are available on grain originating at Bloomington, Ill., and stations intermediate between that point and Peoria, milled at the latter point and reshipped as manufactured products, back through those origin points, by way of Sandusky, to eastern territory, thus involving a back haul; and proportional rates are maintained from these origin points to Peoria and reshipping rates out of Peoria, the aggregate of which is the equivalent of the through rates.

In handling grain shipments for Indianapolis from points on defendant's main line, the cars must be cut out of the main-line trains and moved south of Tipton by other power, and when for mills or elevators they must be turned over to a belt line for switching, none of these industries at that point being located on its line. Defendant contends that the out-of-line or back haul on this traffic involves from 8 to 12 movements not required on traffic moving directly east through Sandusky, and that the back-haul charge is not unreasonable; but on the contrary that it is lower than generally applies for similar services in this territory. Certain other lines serving Indianapolis authorize transit at that point in connection with the through rates, but Indianapolis is on the direct route of these lines. The rates referred to from Bloomington and contiguous points are shown to apply out of Peoria through Chicago and Chicago junction points, and by way of such routes the distances are slightly greater than over the route through Sandusky, plus the out-of-line haul south of Tipton; but there is a distinction between routes involving back-haul or out-of-line movements on the one hand and so-called indirect routes on the other. With respect to transit in connection with out-of-route or back-haul movements, we said in *Stock & Sons v. L. S. & M. S. Ry. Co.*, 31 I. C. C., 150:

The theory of transit is service at some point between the points of origin and destination of the traffic, and in the direction of the movement of the traffic to the point of final destination. A back haul is contrary to the purpose of transit and should generally be permitted only to meet unusual situations, and when to do so does not result in unjust discrimination or other violations of law.

In *Grain Transit at Michigan Stations*, 47 I. C. C., 104, we said:

The millers located upon the branch lines may be subjected to some disadvantage in comparison with competitors located along respondent's main lines if they are required to pay higher rates to and from the various markets in which they deal, but the disadvantage would arise from their location.

On traffic to eastern territory, the complainant asks for the establishment of the existing transit service in connection with certain additional routes. The additional routes asked under its modified claim upon the hearing are (1) in connection with the Big Four between Lafayette and Indianapolis, on traffic originating west of
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Lafayette; and (2) in connection with the Big Four on all traffic moving out of Indianapolis. If grain were handled via these routes there would be no back haul on traffic moving through Indianapolis. Defendant objects to the establishment of these routes, contending that the route through Sandusky is not unreasonably long and that under section 15 of the act it is entitled to the materially longer haul afforded by that movement. The distance from Lafayette to Indianapolis is 89 miles by way of defendant's line and 64 miles by way of the Big Four, and from Indianapolis to New York, N. Y., the short-line distance is 938 miles in connection with defendant's line and 913 miles in connection with the Big Four. Complainant states that defendant does not retain the long haul on grain originating at stations on its main line between Peoria and Oxford, Ind., the tariffs authorizing routing of that traffic to eastern territory in connection with the New York Central beyond Handy, Ind., a junction point of these lines intermediate between the stations named. However, the joint rates over this route are 1 cent higher than in connection with defendant's line through Sandusky and there is no showing of similarity of transportation conditions affecting these rates and the rates assailed.

The record does not warrant the establishment of transit in connection with the routes asked nor does it afford a basis for condemning the reasonableness of the back-haul charge or the reasonableness of the through rates assailed to either eastern territory or Virginia cities.

The question of undue prejudice, which in many respects is the gravamen of the complaint, remains to be considered. Grain prices in this section are generally based on the New York market, and competition is keen. Emphasizing the importance of Indianapolis as a grain market and the advantage both to it and to the shippers of an adjustment that will attract the traffic to that market, complainant's members testify that since the addition of the back-haul charge, large quantities of grain originating on defendant's lines and formerly handled at Indianapolis, have moved to other markets.

Included among the points alleged to be unduly preferred are Peoria and Chicago. The rate adjustment at Peoria has been described above, but, other than a reference to the provisions of the tariffs, little testimony was offered with respect to that situation. It is not shown that grain is diverted from the Indianapolis market by that adjustment nor is there a showing of similarity of transportation conditions surrounding the respective rates.

The claim of a preferential adjustment in favor of Chicago appears to be predicated upon the fact that to eastern territory, the rates re-

ferred to, on traffic milled at or routed through Peoria, and likewise the rates on traffic interchanged with the New York Central at Handy, apply through Chicago, via which route the distances are somewhat greater than over defendant's direct route through Sandusky. But as has been shown, these routes do not involve a back haul. The rates on traffic moving through Handy are higher than the direct-line rates and the record is silent as to the transit services, if any, that are accorded Chicago in connection with those rates or the manner in which routing via that point results in undue prejudice to complainant.

The undue prejudice alleged is based essentially on the situation at Noblesville, Ind., intermediate between Indianapolis and Tipton, and 17.5 miles south of that junction. The Indianapolis mills meet their strongest competition at Noblesville, those at both points buying their grain in the same territory and seeking the same markets for the sale of their products, and as contrasted with the situation described at Indianapolis the record shows (1) that on traffic to eastern territory, Noblesville, both prior and subsequent to February, 1920, has been accorded milling in transit, and since that date an arrangement for mixing and storage in transit has been provided, which services have applied and now apply in connection with the through rate, without the addition of an out-of-line or back-haul charge; and (2) that on traffic to Virginia cities, originating on defendant's main line west of Tipton and on the lines of its connections west of Peoria, the through rates apply by way of Noblesville and defendant's line out of that point through Sandusky and transit as provided in Kelly's transit grain circular above referred to, is available.

The testimony shows that shortly prior to federal control, defendant agreed to accord certain of the relief here asked and that subject to our approval, it is now willing to eliminate the out-of-line or back-haul charge on traffic to eastern territory and to eliminate the "plussed rate" basis and accord transit connection with traffic from Indiana stations to Virginia cities.

We are of the opinion and find that the rates, routes, rules, and regulations assailed are not shown to be unreasonable or unjustly discriminatory, but that the rates, routes, rules, and regulations applicable on grain and grain products originating at points on the lines of the Lake Erie & Western Railroad Company north, south, and west of Tipton, Ind., destined to the western termini of the eastern trunk lines, trunk line territory, and points taking same rates or arbitraries higher, and on the same commodities, originating at points south of Tipton and also west of that point to and includ-

ing Hustle, Ill., destined to Virginia cities and points taking same rates or arbitraries higher, are and for the future will be unduly prejudicial to Indianapolis and unduly preferential of Noblesville, to the extent that the rates applicable via Indianapolis exceed those applicable via Noblesville, and to the extent that transit arrangements are provided at Noblesville in connection with the through rates which are not contemporaneously provided in connection with such rates at Indianapolis.

An appropriate order will be entered.

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INVESTIGATION AND SUSPENSION DOCKET No. 1389.

CLASSIFICATION RATING ON PAPER SHOPPING BAGS.

Submitted September 23, 1921. Decided November 5, 1921.

Proposed ratings on paper shopping bags, with handles, in carloads and less than carloads, in official, southern, and western classifications, found justified. Order of suspension vacated and proceeding discontinued.

J. N. Steadwell, H. C. Bush, and A. H. Greenly for respondents.
George W. Snell and T. J. Nestor for protestants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

By schedules filed to become effective August 31, 1921, respondents propose to establish new ratings in official, southern, and western classifications on paper shopping bags, with handles, printed or not printed, in bales, boxes, bundles, or crates, as follows: Less than carloads, second class; carloads, minimum 24,000 pounds, subject to rule 34 which provides graded minima dependent upon the length of cars, fourth class in official and western classifications, and fifth class in southern classification. Upon protest of the Union Bag & Paper Corporation, of New York, N. Y., the schedules were suspended until December 29, 1921. The Grand Lake Company, Incorporated, manufacturing paper bags and sacks at Woodland, Me., and Grand Rapids, Mich., with offices in New York, is also a protestant.

Paper shopping bags are of somewhat recent origin. Dealers in general merchandise frequently furnish to their customers a large paper sack as a container for several purchases. In material, machining, and processing, the article here considered resembles the ordinary large bag used by grocers, but it is further finished in that the top of the bag is folded back upon itself, pasted, and reenforced with cardboard so that handles, generally of twisted-paper cord, may be affixed with metal staples run through eyelets, or the handles may encircle the entire bag. Some of the bags bear no printing, but many of them have printed thereon an advertisement of the dealer. On others colored designs or pictures are printed.

Specific ratings for paper shopping bags have not been published heretofore in the consolidated classification. The movement thus far has been almost entirely in less-than-carload quantities, generally mixed with paper bags, n. o. i. b. n. The ratings on the latter are given in the table below. The Western Classification Committee, when the commodity under consideration was presented for transportation, ruled that it was analogous to notions, rated first class in that territory. Respondents are of opinion that there is closer analogy between the paper shopping bags and those made of cotton, grass, or jute, rated in the classifications first class, than to paper bags, n. o. i. b. n.

The bags upon which the ratings are proposed are made of kraft paper and of manila paper, as are many other paper bags. Kraft paper is said to derive its name from the process used in its manufacture. On September 1, 1921, the value per pound of kraft paper was 5.25 cents and of manila paper 5.75 cents. On that date the value per pound of the ordinary kraft paper bag was 11.8 cents. The values of shopping bags are variously stated. Respondents say that they range in value from 12 to 30 cents per pound. Those made by protestant Grand Lake Company are valued at \$22, or, with designs or pictures, \$26 per 1,000, and weigh 180 pounds. Ordinary paper bags made by it weigh 130 pounds and are valued at \$11 per 1,000. Protestant Union company makes ordinary paper bags and paper shopping bags which average, in value per pound, 8 cents and 14 cents, respectively. With handles encircling the bag the latter are valued at 22.75 cents per pound.

Paper shopping bags range in density from 10 to 17 pounds per cubic foot. The only straight carload shipped by protestant Grand Lake Company weighed 24,400 pounds. By improved methods of packing protestants could load 28,500 pounds in a standard 36-foot car, which will take from 40,000 to 50,000 pounds of ordinary paper bags.

Some of the comparative ratings to which respondents direct our attention are the following:

Classification item.	Official.	Southern.	Western.
Ratings proposed on paper shopping bags:			
Less than carloads.....	2	2	2
Carloads, 24,000 pounds subject to Rule 34.....	4	5	4
Bags, paper, n.o.i.b.n., other than oiled or waxed, in bales, boxes, bundles or crates:			
Printed:			
Less than carloads.....	3	5	2
Carloads, 36,000 pounds.....	5	A	5
Not printed:			
Less than carloads.....	3	5	3
Carloads, 36,000 pounds.....	5	A	5
Crinkled paper bags:			
Less than carloads.....	1	2	1
Carloads, 12,000 pounds.....	3	2	2

Classification item.	Official.	Southern.	Western.
Garment storage or moth bags, paper:			
Less than carloads.....	2	1	1
Carloads, 30,000 pounds.....	5	1	4
School bags, any quantity.....	1	1	1
Woven paper fabric bags:			
Less than carloads.....	2	2	2
Carloads, 30,000 pounds.....	4	4	4
Envelopes, other than Government, stamped, printed or not printed:			
Less than carloads.....	2	1	1
Carloads, 24,000 pounds, subject to Rule 34.....	5	3	3
Burlap bags, not lined, in bags or bundles:			
Less than carloads.....	3	4	2
Carloads, 30,000 pounds.....	4	6	4
Baskets or hampers, splint or stave overhanded or other than overhanded:			
Carloads, loose or in packages, 10,000 pounds, subject to Rule 34.....	2	2	2

Paper is variously rated in the classifications, according to its kind and value as well as other classification characteristics. For example, in the southern classification the ratings for the lowest grades of paper, including scrap or waste paper, are, in carloads, class A; in less than carloads, in machine-pressed bales, fifth class. In that classification paper which is rated third class in less than carloads and fifth class in carloads includes papers which have undergone a further process of manufacture, such as enameled, glazed, or surface-coated. The ratings on higher grades of paper are second class in less than carloads and fifth class in carloads, which are the same as those proposed for paper shopping bags in southern classification. These are said to be normal and cover, among other items, wrappers, other than government-stamped, printed, edges gummed or not gummed; or made of one piece of flat paper, not printed, edges gummed; and paper, other than oiled, vegetable, parchment, or waxed, minima 36,000 pounds. Generally speaking, the ratings in southern classification on paper are lower than those in official and western classifications. Paper shopping bags are a finished manufactured article of at least double the value of the raw materials from which they are made, and are of lower density.

Protestants are particularly interested in the mixture of paper shopping bags with ordinary paper bags in carloads. Their selling agents handle all kinds of paper bags. Because of this method of distribution, the low margin of profit at which they are said to be made and sold, and the fear that they can not outlive a material advance in rates, protestants ask that paper shopping bags be not given any specific ratings, but that the present situation be continued. If the new ratings are permitted to become effective, the shipments in less than carloads will be rated second class, whereas they have been moving at fifth class or class A when included in the same car with paper bags or at commodity rates materially lower than class rates. It is the general rule of the classification committee to provide

specific ratings based on the classification characteristics of articles and not upon their mixing possibilities. Rates and ratings should be definite and specific, and the issue here is whether the ratings proposed are just and reasonable.

On this record we find that the proposed schedules have been justified. An order will be entered vacating our order of suspension and discontinuing this proceeding.

No. 11808.

MARDEN, ORTH & HASTINGS COMPANY

v.

DIRECTOR GENERAL, AS AGENT, CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, ET AL.

Submitted May 28, 1921. Decided October 31, 1921.

Rate on peanut oil in tank-car loads from Louisville, Ky., to Seattle, Wash., found unreasonable. Reparation awarded.

E. J. Forman for complainant.

John F. Finerty, Thomas M. Woodward, and L. B. Da Ponte for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner. Our conclusions differ from those recommended by him.

Complainant, a corporation trading in oils at Seattle, Wash., alleges that the rate charged by defendants on two tank-car loads of peanut oil shipped February 13 and March 25, 1918, from Louisville, Ky., to Seattle was unreasonable and unduly prejudicial to the extent that it exceeded the rates contemporaneously maintained on other vegetable oils from and to the same points. We are asked to award reparation. Rates are stated in amounts per 100 pounds, and do not include the general increases of 1920.

The shipment of February 13 weighed 49,300 pounds and moved over the Cleveland, Cincinnati, Chicago & St. Louis, Chicago & North Western, Chicago, Burlington & Quincy, and Union Pacific.

The shipment of March 25 weighed 60,080 pounds and moved over the Cleveland, Cincinnati, Chicago & St. Louis, Illinois Central, Chicago & North Western, and Northern Pacific. Louisville is in transcontinental group C in eastern defined territory. At the time of movement there were no joint rates on peanut oil from group-C points to Seattle. Charges were collected on both shipments at the applicable combination rate of \$1.24, composed of the fifth-class rate of 19 cents to Chicago, Ill., and a commodity rate of \$1.05 beyond.

When the first shipment moved the rate on cottonseed, castor, coconut, and similar oils, in tank cars, from Louisville to Seattle, was 90 cents. Defendants state that this rate was abnormally low, being one of the schedule-C commodity rates established when water competition through the Panama Canal was at its height. It was blanketed from all eastern defined territory and applied to Pacific coast terminals only, higher rates being maintained to intermediate points. The rate to Spokane, Wash., at that time was \$1.15. With the disappearance of water competition during the war these schedule-C rates were revised and shortly after the first shipment moved the rate to Seattle was increased to \$1.10. On June 25, 1918, under general order No. 28 of the Director General of Railroads, this rate was further increased to \$1.375, and on May 31, 1919, the same rate was established on peanut oil. In this connection defendants point out that the present parity of rates on these commodities was brought about partly by increasing the rate on cottonseed and related oils.

Complainant seeks reparation to the basis of 90 cents on the first shipment and \$1.10 on the second. It contends that there is no difference in transportation conditions which would justify a higher rate on peanut oil than on the other oils mentioned and refers to the fact that when the second shipment moved, as well as subsequently, the rates were the same on all of the oils named from group-D points, which include Chicago territory, to Seattle. Defendants state that this basis was established from group-D upon the application and representation of shippers that there would be a movement from that territory. The extent of the peanut-oil movement from group-D points is not shown. Witness for the Northern Pacific stated that other shipments of peanut oil may have been made from Louisville to Seattle over that defendant's lines at the time those under consideration moved, but that he had found no record of any such movement in the year preceding the hearing, November 4, 1920.

Peanut oil is imported from Japan in large quantities, and under conditions other than those which prevailed during the war it is

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doubtful whether such oil could be brought into Seattle by rail from a point as distant as Louisville and marketed on a competitive basis. Defendants state that there is a substantial movement of cottonseed oil from and to the points under consideration.

Complainant states in a general way that peanut oil is of about the same value as the other oils named, is used for much the same purpose, and is sold in competition therewith. Peanut oil is sometimes used in making lard substitutes. At the time these shipments moved the rates on lard from Louisville to Seattle were \$1.25 and \$1.45, respectively. In support of their contention that the rate of \$1.24 charged was not unreasonable defendants point to the ton-mile earnings of 9.9 mills for the haul of 2,503 miles. That rate, figured upon the average weight of these shipments, 54,690 pounds, yielded car-mile earnings of 27.09 cents. Under a \$1.10 rate the earnings would have been 8.8 mills and 21.85 cents, respectively.

We are of opinion and find that the rate assailed was unreasonable to the extent that it exceeded \$1.10 per 100 pounds; that the shipments were made as described and that complainant paid and bore the charges thereon; that it has been damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the amount of \$153.13, with interest.

An appropriate order will be entered.

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No. 11187.¹

HENRY W. PEABODY & COMPANY

v.

DIRECTOR GENERAL, AS AGENT, CHICAGO, MILWAUKEE
& ST. PAUL RAILWAY COMPANY, ET AL.

Submitted April 25, 1921. Decided September 23, 1921.

Rates on imported straw braid and hemp braid in less-than-carload lots from Seattle and Tacoma, Wash., and San Francisco, Calif., to New York, N. Y., and Chicago, Ill., found not unreasonable or unduly prejudicial. Complaint dismissed.

George C. Lucas for complainants.

John F. Finerty for defendants.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AITCHISON, AND LEWIS.

BY DIVISION 1:

Exceptions were filed by complainants to the report proposed by the examiner.

These complaints are related and will be disposed of in one report. Complainants allege that the rates charged on various shipments of imported straw braid and hemp braid from Seattle and Tacoma, Wash., and San Francisco, Calif., to New York, N. Y., and Chicago, Ill., during July and August, 1918, were unreasonable and unduly prejudicial. We are asked to award reparation. Rates will be stated in amounts per 100 pounds.

The shipments, 25 of straw braid and 3 of hemp braid, originated in the Orient. They ranged in weight from 1,608 pounds to 26,878 pounds, but most of them weighed less than 12,000 pounds. Western classification, which governed at the time the shipments moved, rated straw braid and hemp braid first class in less than carloads, but provided no carload rating. From the ports of entry charges were collected at the first-class rates of \$4.625 to New York and \$4.25 to Chicago on all the shipments except one to New York, on which charges were collected at a rate of \$3.815. Apparently undercharges are outstanding on the latter shipment.

¹ This report also embraces No. 11187 (Sub-No. 1), *S. W. Bridges & Company et al. v. Director General, as Agent*.

Prior to June 25, 1918, less-than-carload commodity rates of \$1.75 on imported straw braid and \$3 on imported hemp braid applied from Pacific coast ports to Chicago, New York, and other eastern destinations. On that date, as a result of general order No. 28 of the Director General of Railroads, all import rates were canceled and the domestic rates as increased were applied on import traffic.

Import commodity rates considerably lower than the contemporaneous domestic rates were reestablished by defendants on about 20 commodities on July 1, 1918, and on additional commodities at various times thereafter until in May, 1919, import commodity rates had been restored on 95 commodities. On September 16, 1918, defendants established from and to the points in question less-than-carload import rates of \$2.50 and \$3.25 on straw braid and hemp braid, respectively.

The rates applicable to New York represented increases of 164 and 54 per cent over the former import rates on straw braid and hemp braid, respectively. Complainants contend that the former transcontinental import and export rates were established to stimulate industries, to encourage production, or to enable goods to move via certain routes; that there was no relation between these rates and the contemporaneous domestic rates, many of the import rates in effect prior to June 25, 1918, applying on commodities which were not produced on the Pacific coast and as to which there were, therefore, no domestic rates published; and that the cancellation of the import rates in such instances left in effect only the class basis which was too high to move the traffic under ordinary conditions. They contend that the cancellation of import and export rates was made without due consideration of the increases which would result therefrom and that the applicable rates were unreasonable as compared with the 25 per cent increase provided by general order No. 28 on domestic traffic generally. Comparisons are made with domestic less-than-carload commodity rates of \$1.875 on chocolate, cocoa, and wool in bales, and \$1.565 and \$2 on leather in effect July 1, 1918, from the Pacific coast to New York.

Defendants contend that the former rates were depressed on account of water and carrier competition; that when such competition was ended by war conditions and the intervention of federal control there was no longer any necessity for these low import rates; and that the applicable rates were reasonable. They submitted a list covering a large number of commodities on which the less-than-carload import rates were canceled on June 25, 1918, and which thereupon took the first-class rate of \$4.625 to New York, or higher. With the exception of straw braid and three other commodities the

import rates on the other commodities contained in the list were not restored in September, 1918. They further compare the rates applicable on the commodities here considered with first-class less-than-carload rates contemporaneously applicable from and to the same points on pressed cloth, hair, cotton cloth, tarpaulins, paper makers' felt, and other commodities, which are of greater density per cubic foot and of less value than straw braid and hemp braid.

No substantial evidence was offered to support the allegation of undue prejudice.

The rates in question were considered by us in *American Trading Co. v. Director General*, 60 I. C. C., 272, and found not to have been unreasonable or unjustly discriminatory. Following that case, and on this record, we find that the rates assailed were not unreasonable or unduly prejudicial. The complaint will be dismissed.

No. 11188.

STERLING LUMBER COMPANY

v.

DIRECTOR GENERAL, AS AGENT, PENNSYLVANIA
RAILROAD COMPANY, ET AL.

Submitted June 2, 1921. Decided October 31, 1921.

Demurrage assessed at Pittsburgh, Pa., on two carloads of lumber from Lukens, Fla., found illegal in part. Reparation awarded.

W. S. Phippen for complainant.

Adams Dodson, Henry Wolf Bickl , and John F. Finerty for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

A proposed report was served upon the parties, and exceptions were filed by defendants. Thereafter the proceeding was reopened for the taking of additional evidence, and to the second proposed report defendants filed exceptions.

Complainant, a corporation engaged in the lumber business at Philadelphia, Pa., by complaint filed January 26, 1920, alleges that demurrage charges collected by defendants at Pittsburgh, Pa., on two carloads of lumber shipped March 13 and 14, 1918, from Lukens, Fla., were unjust, unreasonable, and unjustly discriminatory. We are asked to award reparation in the sum of \$240, plus the war taxes paid thereon.

The bills of lading show that the shipments were consigned to complainant at "29th & Liberty Ave., Pittsburgh, Pa.," route "B. & O. or P. R. R." Twenty-ninth street is listed as a nonagency station in the tariff of the Pennsylvania. The originating carrier, the Seaboard Air Line, omitted "29th & Liberty Ave." from its waybill. When the cars arrived at Pittsburgh over the Pennsylvania on April 25, 1918, the latter placed them at its Thirty-third street station. It was unable to show that notices of arrival were mailed to the billed consignee at Pittsburgh. The Pennsylvania, having no delivery

orders, made inquiry of the F. J. Kress Box Company, of Pittsburgh, hereinafter called the box company, to which it had delivered previous shipments from this complainant, and was advised that the cars were intended for the box company, which held the invoice but no order on the Pennsylvania for delivery of the cars. The Pennsylvania agent having jurisdiction of Thirty-third street station and Twenty-ninth and Liberty avenue declined to make delivery of the cars without orders from complainant. In a letter dated May 7, 1918, that agent advised complainant at its Philadelphia address that the shipments were at Thirty-third street station and that demurrage had accrued. Complainant received the letter on May 9, 1918, and replied the same day directing attention to the fact that the bills of lading showed the destination as "29th & Liberty Ave.," and stating that as instructions "to deliver these cars upon arrival to the F. J. Kress Box Co." had been mailed on March 18, 1918, to the Pennsylvania freight agent at Pittsburgh, delivery to that firm should be effected immediately without demurrage charges. The shipments were delivered to the box company at Twenty-ninth street and Liberty avenue on May 13. The cars were unloaded and released on the following day.

It is the practice, where the billed consignee orders a car delivered to one whose demurrage is computed under an average agreement, and no switching charge is collectible, to account for the car under the average agreement of the ultimate consignee. The Pennsylvania had an average agreement with the box company, and assessed thereunder charges of \$240 for detention of the cars from April 25 to May 14. These charges were borne by complainant. The rate of charge is not attacked, but complainant questions the right of defendants to assess any demurrage.

It was testified that complainant's instructions of March 18, 1918, to deliver the shipments upon arrival to the box company were never returned. Complainant further contends that the demurrage did not accrue at the point of delivery designated in the bills of lading; and attention is called to the fact that after the arrival of the cars at the specified unloading tracks they were promptly unloaded.

Defendants offer no defense of the Seaboard Air Line's failure to transmit to its connection the instructions in the bills of lading as to the point of delivery. They assert that the delivery instructions said to have been mailed on March 18, 1918, did not reach the agents of the Pennsylvania.

Under the tariff, detention time does not begin to run until the first 7 a. m. after placement on public delivery tracks and after the day on which notice of arrival is sent or given to the consignee. The record does not establish that notice of arrival was sent or

given the consignee until May 7, and we find that the detention should be computed from the following 7 a. m. The weight of the evidence justifies the conclusion that complainant's letter of May 9 containing delivery directions was received by the Pennsylvania by May 11. These instructions released the cars as of 7 a. m. of that day, and no demurrage should be assessed for the two days intervening between the receipt of these instructions and the actual placement of the cars on May 13 in an accessible position for unloading. As above stated, the cars were unloaded and finally released on May 14. It thus appears that each of the cars accrued two debits. Debits uncanceled by credits earned during the same month were chargeable at \$3 each. All of the debits charged against these cars were paid in cash.

There remains for consideration complainant's contention that, as the cars were not held at Twenty-ninth street and Liberty avenue, the delivery specified in the bill of lading, no demurrage was assessable. While defendants erred in omitting this delivery from their billing and in failing to tender the cars on the designated tracks, and are responsible for any consequences naturally flowing from that error, the record does not sustain a finding that the demurrage here assailed is a consequence of that error. On the contrary, the proximate cause of the accrual of such demurrage as was assessable was the nondelivery to defendants of complainant's instructions to deliver the cars to the box company.

We find that the demurrage charges collected were illegal to the extent that they exceeded \$12; that the shipments were made as described; that complainant bore the demurrage charges thereon; and that it has been damaged and is entitled to reparation from the Director General of Railroads, as Agent, in the sum of \$228, with interest. We are without power to order refund of war taxes.

An order awarding reparation will be entered.

64 I. C. C.

No. 11867.

MORRIS & COMPANY

v.

DIRECTOR GENERAL, AS AGENT.

Submitted June 16, 1921. Decided October 31, 1921.

Rate on frozen beef, in carloads, from Columbus, Ohio, to New York, N. Y., found unreasonable. Reparation awarded.

John S. Burchmore, Luther M. Walter, and Nuel D. Belnap for complainant.

Guernsey Orcutt and Alexander M. Bull for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by defendant to the report proposed by the examiner and the case was orally argued.

Complainant, a corporation engaged in the meat-packing business at Chicago, Ill., alleges that the rate of 69.5 cents charged on 11 carloads of frozen beef shipped from Columbus, Ohio, to New York, N. Y., in February and March, 1918, was unreasonable to the extent that it exceeded 36.5 cents. Reparation only is sought. Rates are stated in cents per 100 pounds.

The shipments, aggregating 311,717 pounds, had been sold to the British government and were moved to New York, as routed by the operating committee of the Railroad Administration, over the Pittsburgh, Cincinnati, Chicago & St. Louis and its connections, hereinafter referred to as the Pan Handle route. Freight charges of \$2,166.41 were collected at the applicable first-class rate of 69.5 cents. A commodity rate of 36.5 cents, to the basis of which reparation is sought, was contemporaneously in effect over the New York Central and over the Baltimore & Ohio. This rate and the class rate charged were 77 per cent of the corresponding Chicago-New York rates, Columbus being a 77 per cent point under the percentage adjustment in effect in this territory.

When the shipments moved there were in effect to New York over the Pan Handle route commodity rates of 41.5 cents from Cincin-

nati and Hamilton, Ohio, 40 cents from Dayton, Ohio, and 39 cents from London and Xenia, Ohio, all more distant points to which Columbus is directly intermediate. The tariff containing these rates provided, in accordance with rule 77 of our Tariff Circular 18-A, that upon reasonable request therefor rates would be established on one day's notice from intermediate points not exceeding those from more distant points. This was a substantial compliance with the requirements of the fourth section of the act. *Du Pont de Nemours & Co. v. Director General*, 55 I. C. C., 247. No request had been made by complainant for the establishment of a commodity rate over the Pan Handle, although that route is somewhat shorter than the others mentioned. Complainant does not ordinarily ship over the Pan Handle because that route does not connect with its team tracks at New York.

On March 25, 1918, the Chicago-New York rate was increased from 47.5 cents to 55 cents under our decision in *The Fifteen Per Cent Case*, 45 I. C. C., 303, and at that time a rate of 42.5 cents, based on 77 per cent of the Chicago-New York rate, was also published from Columbus to New York over the various routes other than the Pan Handle. On June 15, 1918, the 42.5-cent rate was published over the latter route. Defendant stated that a commodity rate had not theretofore been published over the Pan Handle for the reason that no shipments had previously moved and no request had been made for the establishment of such a rate.

We find that the rate assailed was unreasonable to the extent that it exceeded 36.5 cents per 100 pounds; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged in the amount of the difference between the charges paid and those that would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$1,028.65, with interest.

An appropriate order will be entered.

64 I. C. C.

No. 12249.

PFEISTER & VOGEL LEATHER COMPANY

v.

DIRECTOR GENERAL, AS AGENT, LEHIGH VALLEY
RAILROAD COMPANY, ET AL.

Submitted July 2, 1921. Decided October 31, 1921.

Rates to Cheboygan, Mich., on myrobalans, in carloads, from New York, N. Y., and Philadelphia, Pa., and on bark extract, in carloads, from New York, N. Y., found not unreasonable or otherwise unlawful. Refund of overcharges on certain shipments directed. Complaint dismissed.

A. B. Caswell for complainant.

E. H. Burgess for defendants generally.

Carl R. Henry for Detroit & Mackinac Railway Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation operating a tannery at Cheboygan, Mich., alleges by complaint filed February 12, 1921, that the rates charged for the transportation to Cheboygan during January, 1920, of 12 carloads of myrobalans from New York, N. Y., and Philadelphia, Pa., and 6 carloads of bark extract, in barrels, from New York, were unreasonable, unjustly discriminatory, and unduly prejudicial. It asks for reparation and the establishment of reasonable rates for the future. Rates are stated in cents per 100 pounds.

The myrobalan is a nut grown in India. Bark, or quebracho, extract is a liquid produced from the bark of certain South American trees. Both are used in tanning leather.

The shipments from New York were delivered to the Lehigh Valley, routed "Grand Trunk, D. & M." They moved over the Lehigh Valley to Buffalo, Grand Trunk to Bay City, Mich., and Detroit & Mackinac to destination, 967 miles. Charges were collected at the applicable joint commodity rates of 43.5 cents on the myrobalans and 52 cents on the bark extract. There were contemporaneously in effect

over the Lehigh Valley, in connection with the Michigan Central from Buffalo, joint commodity rates of 37.5 cents on myrobalans and 45 cents on bark extract.

The shipments from Philadelphia were delivered to the Philadelphia & Reading, routed "L. V., Grand Trunk and D. & M." They moved over the Philadelphia & Reading to Bethlehem, Pa., Lehigh Valley to Buffalo, Grand Trunk to Bay City, and Detroit & Mackinac to destination, 935 miles. Charges were collected at a rate of 50 cents. A joint commodity rate of 41.5 cents was applicable. The overcharges should be refunded promptly, with interest. A joint commodity rate of 35.5 cents was applicable over the Philadelphia & Reading in connection with the Lehigh Valley and Michigan Central.

Complainant's plant is served by the Detroit & Mackinac and the Michigan Central. It routed the shipments by the higher-rated routes because it desired prompt delivery and there was a rumor that the Michigan Central was congested. Its case is based upon the contention that, as the railroads were being operated by the Director General as a unified system, there was no justification for the maintenance of rates over the routes of movement different from those in effect in connection with the Michigan Central. This contention overlooks the fact that part of the movement was through the Dominion of Canada. Moreover, complainant routed the shipments to suit its own purposes, and the mere showing of lower rates over other routes does not warrant condemnation of the rates over the routes of movement, even though the shipments moved during federal control.

No evidence respecting the present rates was offered, nor any proof of undue prejudice or unjust discrimination submitted.

We find that the rates assailed were and are not unreasonable or otherwise unlawful. The complaint will be dismissed.

No. 12168.

HAMILTON FOUNDRY & MACHINE COMPANY

v.

DIRECTOR GENERAL, AS AGENT.

Submitted July 7, 1921. Decided October 31, 1921.

Demurrage charges at Hamilton, Ohio, on cars of sand arriving in frozen condition found to have been legally assessed and not unreasonable or otherwise unlawful. Complaint dismissed.

P. P. Boli for complainant.

Guernsey Orcutt and *Royal McKenna* for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant is a corporation manufacturing iron and steel castings at Hamilton, Ohio. By complaint filed January 29, 1921, it alleges that demurrage charges of \$1,445, assessed and collected for the detention of 26 cars of sand which arrived at Hamilton between November 27, 1919, and January 3, 1920, with contents frozen, were illegal, unjust, and unreasonable. Reparation is asked.

Complainant usually receives from 28 to 30 cars of sand each week and can unload 50 or 60 cars in that time. A car of sand ordinarily can be unloaded in four hours, but when frozen from three to six days are required. During December, 1919, and January, 1920, many of these shipments arrived in frozen condition, thus causing delay in unloading, and a consequent accumulation of cars at the plant. When shipments then en route arrived they could not be received by complainant and were therefore constructively placed, remaining on tracks in the vicinity of the plant, or in railroad yards until complainant was ready to receive them. Many, if not all, of these 26 cars were constructively placed. Demurrage charges were assessed thereon after the expiration of 48 hours free time, and ultimately collected.

Complainant contends that no demurrage should have been collected because of the following provision in the tariff:

RULE 8—*Claims.*

No demurrage charges shall be collected under these rules for the detention of cars through causes named below. * * *

CAUSES.

SECTION A.—Weather interference.

2. When the lading is frozen while in transit so as to require more than forty-eight hours to remove it from the car, the total time actually expended by consignee in heating, thawing, or loosening and removing it will be considered as free time, but no allowance will apply to shipments which are tendered in a condition to unload. Under this rule, consignee shall not be entitled to additional time unless, within the prescribed free time, he shall serve upon the railroad's agent a written statement that the lading was frozen when tendered.

Written statements of the frozen condition of the sand were not served upon defendant's agent under this rule. The only written statement or notice served or sent by complainant was addressed to the agent under date of December 23, 1919, and related to five cars which had arrived between December 4 and December 19. This agent testified that some time in the latter part of December his attention was first called to the fact that complainant was experiencing difficulty in unloading, and that thereafter he visited the plant and personally saw five or six cars of frozen sand. Three of these are vaguely identified in the record and apparently had been in Hamilton from 11 to 19 days. The record does not affirmatively show that defendant had knowledge of the condition of the other cars upon which demurrage accrued.

We find that the demurrage charges were legally assessed and were not unreasonable or otherwise unlawful. The complaint will be dismissed.

No. 12141.

VALLEY IRON COMPANY

v.

IRON & QUINCY RAILROAD COM-
MITTEE GENERAL, AS AGENT.Rate to Ex. 93 class.

Reference to Mississippi
Valley Iron Co., v.
C. B. & Q. R. R. Co. should
have been to
Hamilton Foundry &
Machine Co. v.
Director General,
64 I. C. C. 439.

1921. Decided October 31, 1921.

St. Paul, Minn., to St. Louis, Mo., found not
le. Complaint dismissed.

ainant.

idants.

OF THE COMMISSION.

ERS HALL, EASTMAN, AND CAMPBELL.

the report proposed by the examiner.
n, alleges by complaint filed January 13,
a coke, in carloads, from St. Paul, Minn.,
r, 1918, was unjust and unreasonable to
the rate subsequently established. We
ion. Rates are stated in amounts per

the Chicago, Burlington & Quincy and
the applicable combination commodity rate
of \$4.80, made up of rates of \$2.80 from St. Paul to Savanna, Ill., and
\$2 beyond. A specific commodity rate of \$2.90 was contemporane-
ously in effect in the opposite direction. After the shipments moved,
and at the request of complainant, the \$2.90 rate was established from
St. Paul to St. Louis, effective October 10, 1918.

There had been no prior movement of coke from St. Paul to St.
Louis. These shipments were the outcome of an experiment with
Illinois coal which had been shipped to St. Paul to determine
whether it was adaptable to coking purposes. This it was found to
be, and, although there are coke-producing plants around St. Louis,
a regular movement of coke from St. Paul to St. Louis is expected.

The distance is 573.3 miles. The rate of \$4.80 yielded ton-mile
revenue of 8.4 mills. For comparison, defendant referred to the rates

Complainant contends that no demurrage should have been collected because of the following provision

RULE 8—*Claim*

No demurrage charges shall be collected under this rule on cars through causes named below. * * *

CAUSES.

SECTION A.—Weather interference.

2. When the lading is frozen while in transit for forty-eight hours to remove it from the car, the consignee in heating, thawing, or loosening as free time, but no allowance will apply to a condition to unload. Under this rule, conditional time unless, within the prescribed time, the railroad's agent a written statement that the l

Written statements of the frozen conserved upon defendant's agent under a statement or notice served or sent by the agent under date of December 23, 1911, which had arrived between December 11 and 19, 1911. The agent testified that some time in the latter part of December 1911, attention was first called to the fact that considerable difficulty in unloading, and that thereafter personally saw five or six cars of frozen lumber, which are vaguely identified in the record as having arrived at Hamilton from 11 to 19 days. The record shows that defendant had knowledge of the fact upon which demurrage accrued.

We find that the demurrage charges were not unreasonable or otherwise unlawful and should be dismissed.

Univ. of Ill. Lib. Call Slip

Address.....

Name.....

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Title.....

Author.....

Overdue books are subject to a fine of 2 cents a day.

Call Number

No. 12141.

MISSISSIPPI VALLEY IRON COMPANY

v.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY AND DIRECTOR GENERAL, AS AGENT.

Submitted July 7, 1921. Decided October 31, 1921.

Rate on coke, in carloads, from St. Paul, Minn., to St. Louis, Mo., found not unreasonable. Complaint dismissed.

B. M. Godfrey for complainant.

W. P. O'Rourke for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation, alleges by complaint filed January 13, 1921, that the rate charged on coke, in carloads, from St. Paul, Minn., to St. Louis, Mo., in October, 1918, was unjust and unreasonable to the extent that it exceeded the rate subsequently established. We are asked to award reparation. Rates are stated in amounts per net ton.

The shipments moved over the Chicago, Burlington & Quincy and charges were collected at the applicable combination commodity rate of \$4.80, made up of rates of \$2.80 from St. Paul to Savanna, Ill., and \$2 beyond. A specific commodity rate of \$2.90 was contemporaneously in effect in the opposite direction. After the shipments moved, and at the request of complainant, the \$2.90 rate was established from St. Paul to St. Louis, effective October 10, 1918.

There had been no prior movement of coke from St. Paul to St. Louis. These shipments were the outcome of an experiment with Illinois coal which had been shipped to St. Paul to determine whether it was adaptable to coking purposes. This it was found to be, and, although there are coke-producing plants around St. Louis, a regular movement of coke from St. Paul to St. Louis is expected.

The distance is 573.3 miles. The rate of \$4.80 yielded ton-mile revenue of 8.4 mills. For comparison, defendant referred to the rates
64 I. C. C.

on coke from St. Paul to important points in South Dakota, Iowa, Nebraska, and Kansas, and between other points in upper Mississippi Valley territory for distances ranging from 138 to 576 miles. These rates yield ton-mile revenues of from 8 to 13.2 mills. Complainant contended that these rates were not comparable because rates from St. Paul to St. Louis were established as a result of water competition on the Mississippi River and without regard to distance, but made no effort to show by exhibits of analogous rates that the rates under attack were unreasonable.

We have repeatedly said that neither the voluntary reduction of a rate, nor the existence of a lower rate in the opposite direction is of itself a sufficient ground upon which to base a finding of unreasonableness.

We find that the rate assailed was not unreasonable. The complaint will be dismissed.

64 I. C. C.

No. 12109.

AULT & WIBORG COMPANY

v.

DIRECTOR GENERAL, AS AGENT, PITTSBURGH, CINCINNATI, CHICAGO & ST. LOUIS RAILROAD COMPANY,
ET AL.

Submitted July 9, 1921. Decided October 31, 1921.

Rate on barytes, in carloads, from Ivorydale, Ohio, to Argo, Ill., found not unreasonable or otherwise unlawful. Complaint dismissed.

F. D. Reiley for complainants.

Royal McKenna for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation, alleges that the rate of 16.5 cents applicable on 79 carloads of barytes, shipped from Ivorydale, Ohio, to Argo, Ill., between April 1, 1919, and February 20, 1920, was unreasonable, unjustly discriminatory, and unduly prejudicial. We are asked to award reparation to the basis of the subsequently established rate of 16 cents. Rates are stated in cents per 100 pounds.

Prior to June 25, 1918, the rate was 13 cents. On that date, pursuant to general order No. 28 of the Director General, it was increased to 16.5 cents. On February 29, 1920, it was reduced by him to 16 cents.

Complainant's case is based solely on the contention that, by exception to official classification, barytes is rated 90 per cent of sixth class; that, at the time of movement, the sixth-class rate from Ivorydale to Argo was 18 cents; and that 90 per cent of 18 cents would be 16 cents under the rules for disposition of fractions.

The mere showing of the fact that in making effective the increases provided in general order No. 28 a slight disturbance was created in the percentage relationship which this rate bore to the sixth-class rate between the same points, and the subsequent voluntary restoration of that relationship, does not warrant a condemnation of the rate assailed.

We find that the rate assailed was not unreasonable or otherwise unlawful. The complaint will be dismissed.

No. 12054¹

PURE OIL COMPANY

v.

DIRECTOR GENERAL, AS AGENT, MISSOURI, KANSAS &
TEXAS RAILWAY COMPANY, ET AL.

Submitted July 2, 1921. Decided October 31, 1921.

Rates on iron tanks, knocked down, in carloads, from Cushing, Okla., to Central City, Ohio, and Morgantown, W. Va., found not unreasonable or otherwise unlawful. Complaints dismissed.

H. M. Myers for complainant.

E. C. Blanchard for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner.

The issues in these cases are similar. The record in No. 12054 was made a part of the record in No. 12105, and they will be considered in one report. Rates are stated in amounts per 100 pounds.

In No. 12054 complainant alleges that the fifth-class rate of \$1.06 applicable on a carload of iron tanks, knocked down, shipped July 5, 1919, from Cushing, Okla., to Central City, Ohio, was unreasonable, unjustly discriminatory, and unduly prejudicial. The shipment weighed 82,000 pounds and moved, as routed, over the Missouri, Kansas & Texas to Alton, Ill., and Illinois Terminal and Pittsburgh, Cincinnati, Chicago & St. Louis beyond. Charges were collected at a rate of \$1.055. The rate applicable was composed of fifth-class rates to and from Alton of 79 and 27 cents, respectively. There is an outstanding undercharge of \$4.10 on the shipment.

In No. 12105 the same complaint is made against a combination rate of \$1.15 charged on two carloads of iron tanks, knocked down, shipped June 13 and 14, 1919, from Cushing, originally destined to Central City but diverted to Morgantown, W. Va. The shipments

¹ This report also embraces No. 12105, Same v. Same.

were routed by the shipper over the Missouri, Kansas & Texas to St. Louis, Mo., and Baltimore & Ohio beyond, the applicable rate being the combination of fifth-class rates of 79 and 36 cents to and from St. Louis, respectively. The evidence in each case relates solely to the 79-cent factor.

Complainant's claim for reparation is based primarily on the fact that from February 10 to June 30, 1919, and from November 25, 1919, to May 25, 1920, a commodity rate of 62.5 cents on iron tanks, knocked down, was in effect from Cushing to Roxana, Ill., a point about 7 miles southeast of Alton on the Illinois Terminal, intermediate to Central City over the route of movement of the shipment in No. 12054. If that shipment had moved while this rate was in force a lower combination would have applied. As to the shipments in No. 12105, which moved via St. Louis while the 62.5-cent rate to Roxana was in effect, complainant contends that this rate should have been applied to St. Louis, because Roxana and St. Louis ordinarily take the same rate on traffic from Oklahoma.

Defendants explain that the rate of 62.5 cents to Roxana was an emergency rate, published upon the representation of the Roxana Petroleum Company that it contemplated the removal of its refinery from Cushing to Roxana and expected to ship about 200 cars of tanks, knocked down, and other material. There is no regular movement of such articles in this direction, and the rate was expressly limited to expire June 30, 1919. The Roxana company was not able to complete its shipments by that date, and upon its further request, the 62.5-cent rate was restored for a period of six months. Complainant took advantage of this rate on other shipments which moved prior to June 30, 1919, by routing them through Alton and Roxana instead of St. Louis. Complainant made no request for the continuance of the commodity rate beyond June 30, 1919, or for its establishment to St. Louis.

Defendants state that temporary commodity rates for large movements of tank material are frequently established from oil-producing territory because of the necessity for dismantling refineries when the oil supply is exhausted. It is shown that class rates generally apply on iron tanks, knocked down, to St. Louis from points in Oklahoma, Missouri, Kansas, Colorado, and Texas. Commodity rates are maintained from St. Louis to some of the same points, but it appears that there is a regular movement in that direction. A contemporaneous commodity rate of 62.5 cents applied from St. Louis to Cushing. Class rates applying on sporadic shipments, such as those here considered, can not be condemned merely because commodity rates are maintained in the opposite direction in which there is a regular movement.

Complainant competes with the Roxana Petroleum Company in the sale of its products. It contends that the publication and republication of the rate to Roxana for the benefit of its competitor resulted in undue prejudice to it, and that it was damaged thereby. The two companies were shipping their own iron tanks to new locations, and were not in competition in the sale or purchase of these tanks. Only the rates on the tanks are here in issue. There is no proof of damage resulting from the alleged undue prejudice.

We find that the rates assailed were not unreasonable or otherwise unlawful. The complaints will be dismissed.

64 I. C. C.

No. 11378.

OLIVER IRON & STEEL COMPANY

v.

PITTSBURGH & LAKE ERIE RAILROAD COMPANY ET AL.

Submitted July 12, 1921. Decided November 3, 1921.

Refusal of trunk line defendants to compensate complainant for the expense of terminal switching of cars moving interstate to and from its plant at Pittsburgh, Pa., found to have resulted in the exaction of charges for transportation which were unreasonable. Reparation awarded.

Borders, Walter, Burchmore & Collin for complainant.

James Stillwell and *Guernsey Orcutt* for Pennsylvania Railroad Company.

Reed, Smith, Shaw & Beal and *George D. Wick* for Pittsburgh & Lake Erie Railroad Company.

REPORT OF THE COMMISSION.

DIVISION 4, COMMISSIONERS MEYER, DANIELS, EASTMAN, AND POTTER.
DANIELS, *Commissioner*:

Exceptions were filed by all of the parties to the report proposed by the examiner.

Complainant, a corporation, manufactures certain iron and steel articles at Pittsburgh, Pa. By complaint filed April 7, 1920, it alleges that the failure of defendants to apply the Pittsburgh rates on interstate shipments to and from its plant, without charge for terminal switching in addition to the line-haul rates, while contemporaneously performing like services without additional charge for other industries in Pittsburgh and other iron and steel producing districts, subjects complainant to the payment of rates and charges which are unreasonable, unjustly discriminatory, and unduly prejudicial. It asks reparation for the alleged unlawful charges paid by it between February 1, 1916, and June 1, 1917, and the establishment of rates to and from complainant's plant which shall not exceed the Pittsburgh rates.

Complainant's plant is located on the south side of the Monongahela River between Tenth and Fifteenth streets, within the Pittsburgh switching district. Complainant owns standard-gauge tracks in and about its plant, which connect outside the plant with the main

line of the Pittsburgh & Lake Erie and the Whitehall branch of the Pennsylvania, both of which extend from Third street to Twenty-first street between complainant's plant and the river. It also has certain trackage rights for intraplant switching over the above-named trunk lines in the vicinity of its plant. Its tracks, trackage rights, and equipment are leased to the Allegheny & South Side Railway Company, a corporation which is owned and controlled by complainant and which has no other tracks or equipment, but uses the tracks of the trunk lines between Third and Twenty-first streets under the arrangement hereinafter described.

In 1904 the Pittsburgh & Lake Erie and in 1905 the Pennsylvania entered into contracts with the Allegheny & South Side, under which the latter switched carload freight between the Pittsburgh & Lake Erie's siding at Tenth street and the Pennsylvania's yard at Twenty-first street, on the one hand, and points within the plants of complainant and about a dozen or more other industries located along the trunk lines between Third and Twenty-first streets, on the other hand, for which the Pittsburgh & Lake Erie paid the cost of the service performed for it and the Pennsylvania paid \$1 per loaded car switched for it. Following the *Industrial Railways Case*, 29 I. C. C., 212, these contracts were canceled on April 1, 1914, but the Allegheny & South Side continued to perform the switching and spotting, and in December, 1914, the trunk lines entered into new contracts with the Allegheny & South Side. The new contracts were made effective as of April 1, 1914, and provided for the continuance of such switching by the Allegheny & South Side between the interchange above mentioned and all patrons of the trunk lines between Third and Twenty-first streets, for which the trunk lines agreed to pay the actual cost of the service, except that the Allegheny & South Side was not to move for or to be paid by the trunk lines for the movement of cars between the interchange tracks and the points of placement in complainant's plant. The Allegheny & South Side continued to perform the switching to and from complainant's plant as before, but no specific compensation for this particular service was paid by the trunk lines after April 1, 1914, until June 1, 1917, when tariffs were made effective pursuant to agreements granting to complainant an allowance on the basis of the actual cost of the service but not to exceed 97 cents per loaded car.

The Allegheny & South Side is named as a defendant and it is alleged that the defendants are common carriers. The Allegheny & South Side has filed tariffs with us since July 1, 1914. Previous to June 25, 1918, its tariff provided a charge of \$1 per loaded car for switching between all industries or sidings and junctions with con-

necting lines, and \$1.75 per loaded car for switching between all industries or sidings and other industries or sidings. On June 25, 1918, the last-mentioned charge was increased to \$2, and on September 15, 1920, the above charges were increased to \$2 and \$3, respectively. Complainant states that it has paid to the Allegheny & South Side its published charges for each loaded car switched by it between complainant's plant and the points at which interchange is made with the trunk lines, but apparently similar charges were not assessed for the switching performed by it between the other industries and the interchange points with the trunk lines. In *Allegheny & S. S. Ry. Co. v. Director General*, 62 I. C. C., 248, decided since the filing of the complaint herein, the Allegheny & South Side has been found not to have been or to be a common carrier subject to the interstate commerce act, and that its schedules on file with us should be promptly canceled.

The actual cost of the terminal switching and spotting performed by the Allegheny & South Side at complainant's plant is not shown of record, but the payments by the trunk lines to the Allegheny & South Side for similar services at the other industries between Third and Twenty-first streets from April 1, 1914, to June 1, 1917, are said to have averaged 90 cents per loaded car. The average cost of handling all cars switched by the Allegheny & South Side during the same period, including intraplant movements, which are admittedly more expensive, is given as \$1.096 per loaded car. For the year ended June 30, 1920, the average cost of switching all cars handled is given as \$2.19 per loaded car, and the payments by the trunk lines for switching to and from other industries averaged \$2.01 per loaded car.

Complainant states that it competes with the Pittsburgh Screw & Bolt Company, Graham Nut Company, and Hubbard & Company in the sale of bolts, spikes, nuts, screws, washers, and other articles which constitute about 97 per cent of its output; that the competitors named are located in the Pittsburgh switching district, the first being served by the Pittsburgh, Chartiers & Youghiogheny Railway, which is owned by the Pennsylvania and Pittsburgh & Lake Erie, and the other two are served by the Pennsylvania; that the switching and spotting services at these competitors' plants were from 1914 to 1917 and are now performed by the trunk lines without any charge in addition to the line-haul rates and that the switching charges of the Allegheny & South Side are borne by complainant and enter into its manufacturing costs.

It was conceded by the Pennsylvania's traffic representative that it is that carrier's duty under its tariffs to deliver and receive carload freight at complainant's plant as well as at the other plants served

by the Allegheny & South Side; that the interchange switching performed by the Allegheny & South Side to and from complainant's plant is substantially the same as that performed by it to and from the other industries; and that the only reason for the cancellation of the original allowance was our decision in the *Industrial Railways Case, supra*, which was considered to hold such allowances unlawful until the supplemental report in that case was issued on November 2, 1914, 32 I. C. C., 129. It was testified for the Pittsburgh & Lake Erie that the complainant's plant is larger and its delivery tracks more complicated than those of the other industries served by the Allegheny & South Side; and that the operation by complainant of certain narrow-gauge tracks in its plant would interfere with the movement of trunk line power in switching at its plant. It was conceded by the same witness, however, that there has been no substantial change in the operation of the complainant's plant since 1910.

Defendants show that 94 industries served by the Pennsylvania in the central region, including Pittsburgh, perform the spotting of cars at their plants without compensation; that 40 industries served by the same line in the same region which now receive an allowance performed their own spotting without compensation during all or part of the period from February 1, 1916, to June 1, 1917; that 13 industries served by the Pittsburgh & Lake Erie perform their spotting without compensation; and that one of the industries between Third and Twenty-first streets in Pittsburgh spots cars inside its plant after they have been delivered to it by the Allegheny & South Side for which the industry receives no compensation. This industry is said to manufacture some of the articles which complainant manufactures. It is stated also that practically all of the allowances on the plant-facility basis now in force are based upon cost figures computed in 1915 or 1916 the same as the cost figures entering into complainant's present maximum allowance.

At the conclusion of the hearing the trunk line defendants offered to perform the terminal switching and spotting at complainant's plant, provided they are permitted to do this under their exclusive direction and control, without interference from complainant, or until interference is met, if we find that it is their legal duty so to do. Complainant asserts that this offer is impossible of performance because it contravenes existing contracts and because the trunk lines could not carry it out without using the delivery tracks leased by complainant to the Allegheny & South Side. As has been frequently said, however, whatever transportation service a carrier is legally obliged to render it has the right to perform for itself. If complainant elects to accept the above offer the trunk lines should perform the terminal

switching and spotting at complainant's plant without charge in addition to the line-haul rates, but if complainant is unwilling to accept the offer we do not see how we can require the trunk lines to increase the compensation paid for a service which they are not permitted to perform themselves.

We find that the trunk line defendants have failed to justify the increased charges resulting from their cessation to pay an allowance to complainant or its industrial line for terminal switching and spotting at its plant of cars moving in interstate commerce and that the increased charges were unreasonable; that their failure to make such an allowance is not shown to have subjected complainant to undue prejudice and disadvantage by reason of uncertainty as to whether its competitors in the Pittsburgh district were similarly circumstanced as to operating conditions; that complainant has been damaged to the extent of the cost of such services; and that it is entitled to reparation, with interest, in an amount equal to the cost of such services performed in connection with interstate shipments on which the delivery was effected on or after February 7, 1916, the earliest date within the period of the statute of limitations, and on or before May 31, 1917.

The exact amount of reparation due can not be determined upon this record. The record indicates that the payments made by the trunk lines to the complainant's industrial line for terminal switching and spotting at other industries between April 1, 1916, and June 1, 1917, did not include interest on investment in tracks and right of way or their maintenance, and that an allowance to complainant computed in the same manner would not be excessive. Complainant should prepare statements showing by months the items of cost in the manner above mentioned, also showing the number of loaded interstate cars interchanged between complainant's plant and each of the trunk lines, and the amount of reparation due thereon under the findings herein, which statements should be submitted to the defendants for verification as to the number of cars which moved interstate and the amount of reparation. Upon receipt of statements so prepared and verified we will consider the entry of an order awarding reparation.

No. 11660.

TRAFFIC BUREAU OF THE CHAMBER OF COMMERCE
OF PHOENIX, ARIZ., ET AL.

v.

DIRECTOR GENERAL, AS AGENT, ABILENE & SOUTHERN
RAILWAY COMPANY, ET AL.

Submitted July 26, 1921. Decided November 3, 1921.

1. Rates on cereals, in carloads, from El Paso, Tex., and defined territorial groups to Phoenix, Tempe, and Mesa, Ariz., not found unreasonable or otherwise unlawful.
2. Prayer for establishment of through route and joint rates on cereals, in carloads, from El Paso, Tex., via Southern Pacific system lines through Phoenix, Ariz., to points on the Santa Fe between Phoenix and Mojave, Calif., and points on both the Santa Fe and Southern Pacific beyond Mojave, denied. Complaint dismissed.

Roland Johnston for complainants.

G. H. Baker and *E. W. Camp* for Atchison, Topeka & Santa Fe Railway Company.

Elmer Westlake and *M. A. Cummings* for Southern Pacific Company and Arizona Eastern Railroad Company.

E. W. Camp and *Elmer Westlake* for Director General.

REPORT OF THE COMMISSION.

DIVISION 4, COMMISSIONERS MEYER, DANIELS, EASTMAN, AND POTTER.

DANIELS, *Commissioner*:

Exceptions were filed by complainant to the report proposed by the examiner.

Complainants are the Traffic Bureau of the Chamber of Commerce of Phoenix, Ariz., and five corporations, members of that organization, dealing in grain, flour, feed, and other commodities at Phoenix, Tempe, and Mesa, Ariz. By complaint filed July 26, 1920, they allege that the rates on cereals, in carloads, from El Paso, Tex., and defined territorial groups to Phoenix, Tempe, and Mesa, were, and are, unreasonable, unjustly discriminatory, and unduly prejudicial. An award of reparation and reasonable rates for the future are asked. Complainants also ask the establishment on cereals, in carloads, from El Paso to points between Phoenix and Mojave, Calif., on the Atchison, Topeka & Santa Fe, hereinafter termed the Santa Fe, and to points beyond Mojave on both the Santa Fe and Southern

Pacific, of a through route and joint rates by way of the Southern Pacific and the Arizona Eastern to Phoenix, thence via Santa Fe to Mojave and either the Santa Fe or Southern Pacific beyond. Rates are stated herein in amounts per 100 pounds.

Phoenix is served by a branch line of the Santa Fe which leaves the main line at Ash Fork, Ariz., 193 miles to the north, and by the Arizona Eastern Railroad, which connects with the main line of the Southern Pacific at Maricopa, Ariz., 35 miles to the south. Tempe, 8 miles east of Phoenix, and Mesa, the same distance east of Tempe, are also served by the Arizona Eastern, the former by the Phoenix-Maricopa line and the latter by a branch line which runs east from Tempe. The Arizona Eastern is owned by the Southern Pacific and is a part of that system though operated as a separate corporation. The Santa Fe also operates a branch line, known as the Parker cut-off, which leaves the Ash Fork-Phoenix line at Wickenburg, Ariz., 54 miles north of Phoenix, and runs in a northwesterly direction through Parker, Ariz., near the Arizona-California boundary line, connecting with the main line at Cadiz, Calif. After entering California, Mojave, 170 miles northwest of Cadiz, is the first point reached by the Santa Fe that is also served by the Southern Pacific.

Defendants maintain a class-C rate of 86.5 cents on cereals, in carloads, from El Paso to Phoenix, Tempe, and Mesa. From the same point of origin to various California destinations the Southern Pacific publishes commodity rates, of which the following are representative: 57.5 cents to Los Angeles, 73 cents to Mojave, and 76.5 cents to San Francisco. In their transcontinental westbound tariff, defendants name commodity rates on this traffic to Phoenix, Tempe, and Mesa of 97.5 cents from groups F, G, and H, and 91.5 from J, which, broadly speaking, include points in the states of Nebraska, Kansas, Colorado, New Mexico, Oklahoma, and Texas, and \$1.08 from groups D and E, which include points in states east of those named to and including Indiana. Rates of 85.5 cents from groups F, G, and H, and 97.5 cents from group D, to Los Angeles, San Francisco, and other California terminals are blanketed back to main-line points in the states of California and Arizona.

Complainants contend that there are no circumstances or conditions which justify the maintenance of higher rates on cereals from El Paso and the territories of origin defined above to Phoenix, Tempe, and Mesa than apply to the more distant California points. They maintain that the rates to the Arizona points should be proportionately lower than to the terminals.

The rate from El Paso will be first considered. It is apparent from the testimony that no cereals originate at El Paso. A few car-

loads of oats and corn were purchased at that point by one of complainants on which charges were applied at the rates applicable from points north or east thereof under a transit arrangement. The prayer for the establishment of a through route and joint rates on traffic from El Paso to points on the Santa Fe, Phoenix to Mojave, and points on both the Santa Fe and Southern Pacific beyond Mojave by way of Southern Pacific system lines to Phoenix, thence via the Parker cut-off is based upon the fact that the distances via the proposed route are in some instances less than via the direct lines of the carriers named. There appears no reason on this record for the establishment of commodity rates on cereals from El Paso. It is unnecessary to discuss short hauling of carriers and other questions which would make impracticable the establishment of the proposed route even if cereals did originate at El Paso.

Superior, Nebr., Liberal, Kans., and Melrose, N. Mex., are representative points in the territory of origin covered by groups F, G, H, and J. Two of the complainants seek reparation on numerous carloads of cereals shipped to Phoenix from points in this territory, practically all of which moved prior to August 26, 1920, the effective date of the general increases authorized on July 29, 1920. The following table shows earnings under rates in effect prior and immediately subsequent to August 26, 1920, Chicago being taken as representative of groups D and E and Mojave and Colton of California points. The distances used are those via the shortest routes as shown in one of complainants' exhibits:

From—	To Phoenix.			To Mojave.			To Colton.		
	Dis- tance.	Rate.	Ton- mile earn- ings.	Dis- tance.	Rate.	Ton- mile earn- ings.	Dis- tance.	Rate.	Ton- mile earn- ings.
	<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>	<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>	<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>
Chicago, Ill.....	{ 1,902	108	11.3	2,165	97.5	9	2,178	97.5	8.9
	{ 1,902	181	8.5	2,165	173	6.7	2,178	173	6.7
Superior, Nebr.....	{ 1,492	97.5	13	1,725	85.5	9.9	1,738	85.5	9.8
	{ 1,492	173	9.7	1,725	164	7.4	1,738	164	7.3
Liberal, Kans.....	{ 971	97.5	20	1,217	85.5	14	1,230	85.5	13.9
	{ 971	173	15	1,217	164	10.5	1,230	164	10.4
Melrose, N. Mex.....	{ 772	97.5	25.2	1,018	85.5	16.7	1,031	85.5	16.5
	{ 772	73	18	1,018	164	12.5	1,031	164	12.3

¹ In effect prior to August 26, 1920.

A statement submitted for complainants shows commodity rates and corresponding class rates on agricultural implements, iron safes, edible nuts, cereals, and various other commodities from Chicago to Phoenix and Calexico, a branch-line point of the Southern Pacific in southern California. With the exception of the commodity rate

on cereals the rates shown are lower to Phoenix than to Calxico. A statement showing the revenue and expenses during the year 1919 of the defendant carriers operating in Arizona was also submitted.

The two cereals in which the complainants are principally interested are milo maize and wheat. These cereals are also produced in the Salt River Valley in which Phoenix, Tempe, and Mesa are located. The Phoenix Flour Mills, one of complainants, imports Kansas wheat for blending purposes, and at the time of the hearing was milling flour of a blend of 40 per cent Kansas, 40 per cent California, and 20 per cent Arizona wheat. A considerable quantity of the milo maize obtained from New Mexico is shipped out of Phoenix in less-than-carload lots of mixed feed.

Defendants assert that the rates to the California terminals are forced to a subnormal level by reason of competition with local cereals and those grown in Washington and Oregon and states east thereof moving by rail-and-water routes into those points. In support of their position defendants refer to cases in which rates on wheat and flour from Kansas points to California and Arizona destinations have been considered. Wheat, the highest-grade cereal, controls the rates on the other cereals. Prior to 1907 rates of 55 cents on wheat and 65 cents on flour were applied from Kansas points to the California terminals; to Phoenix the rates were 86 cents and \$1.35, respectively. In *Howard Mills Co. v. M. P. Ry. Co.*, 12 I. C. C., 258, decided in 1907, we prescribed a differential of 7 cents in the flour rates over wheat rates from the Kansas points to the California terminals and to Phoenix. Subsequent to the decision in this case rates of 58 cents on wheat and 65 cents on flour were published from Kansas points to the California terminals and \$1.18 and \$1.25, respectively, to Phoenix. The Phoenix rates on wheat and flour were under consideration in 1909 in *Valley Flour Mills v. A., T. & S. F. Ry. Co.*, 16 I. C. C., 73, and it was found that they should not exceed \$1 and \$1.12, respectively, the differential for the future on flour being fixed at 12 per cent above wheat. In *Arizona Corporation Commission v. A. & N. M. Ry. Co.*, 29 I. C. C., 424, decided in 1914, we found that rates on flour from Kansas and neighboring states to Arizona main-line points were unreasonable and unduly prejudicial to the extent that they exceeded the contemporaneous rates to the California terminals, and also directed the cancellation of a tariff by which the carrier proposed to increase from 58 cents to \$1 the rates on wheat from and to the same points. The carriers had contended that the 58-cent rate on wheat had been made applicable to Arizona main-line points through error.

In *Kansas-California Flour Rates*, 32 I. C. C., 602, decided in 1915, we found that the carriers had justified as reasonable a rate not in
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excess of 75 cents on flour from points of origin in Kansas, Nebraska, and neighboring states to the California terminals, provided a differential not to exceed 8 cents were maintained between the wheat and flour rates, and that the rates were made applicable at points intermediate to the terminals. Rates of 75 cents on flour and 67 cents on wheat which were published from the points of origin indicated to the terminals were not only made applicable at intermediate Arizona points, but were also extended to Phoenix. *Eisle v. A., T. & S. F. Ry. Co.*, 36 I. C. C., 17. In 1916 the rates from Kansas and neighboring states to the California terminals on wheat and flour were reduced to 58 and 65 cents, respectively, the rates formerly in effect. It was stated that the reductions in these rates were made because the carriers could not meet competition in California under the higher rates. No reduction was then made in the rates to Phoenix. Under general order No. 28, effective June 25, 1918, the 67-cent rate on wheat from points in Kansas and neighboring states to Phoenix was increased 6 cents to 73 cents. Practically all shipments on which reparation is sought moved under the 73-cent rate. Defendants stress the fact that the Phoenix wheat rate sustained only the maximum increase of 6 cents under general order No. 28, whereas the general increase for shorter hauls under that order was 25 per cent.

The evidence of record affords no basis for a finding of unjust discrimination or undue prejudice.

The Phoenix Flour Mills at the hearing proposed that through routes and joint rates, together with transit and diversion arrangements, be established, which would permit cereals to be shipped from Kansas and New Mexico producing points into Phoenix via the Arizona Eastern and the cereals diverted, or the mill products re-shipped, out of that point over the Santa Fe, or be shipped into Phoenix over the Santa Fe and out over the Arizona Eastern. These matters are not put in issue by the complaint and can not be considered here.

We find that the rates assailed to Phoenix, Tempe, and Mesa were not and are not unreasonable or otherwise unlawful. The prayer for the establishment of a through route and joint rates on cereals from El Paso by way of Southern Pacific system lines through Phoenix to points on the Santa Fe from Phoenix to Mojave and points on both the Santa Fe and the Southern Pacific beyond Mojave is denied. The complaint will be dismissed.

No. 11819.

CITIZENS GAS COMPANY

v.

DIRECTOR GENERAL, AS AGENT.

Submitted July 9, 1921. Decided November 3, 1921.

Charges during the period from June 25, 1918, to January 21, 1919, both inclusive, for the movement of sand and gravel, in carloads, within the switching limits of Indianapolis, Ind., found unreasonable. Reparation awarded.

Isaac Born, Charles P. Stewart, and Fred A. Doebber for complainant.

John F. Finerty and L. P. Day for defendant.

REPORT OF THE COMMISSION.

DIVISION 4, COMMISSIONERS MEYER, DANIELS, EASTMAN, AND POTTER.
DANIELS, *Commissioner*:

Complainant, a corporation manufacturing gas and coal products, has two plants in Indianapolis, Ind., one on Prospect street, served by the Indianapolis Union Railway, a switching line jointly owned by various carriers serving Indianapolis and hereinafter called the Belt, and the other on Langsdale avenue, served by the Cleveland, Cincinnati, Chicago & St. Louis Railway, hereinafter called the Big Four. It alleges that the switching charges assessed on 135 carloads of sand and gravel, moved to these plants from certain industries on the Pittsburgh, Cincinnati, Chicago & St. Louis Railroad, hereinafter called the Pan Handle, during the period from June 25, 1918, to January 21, 1919, both inclusive, were unreasonable, unjustly discriminatory, and unduly prejudicial, in violation of the interstate commerce act and of the federal control act. Reparation only is asked. The transportation in question was entirely within the switching limits of Indianapolis and over lines then under federal control.

With the exception of three shipments which moved to the Langsdale avenue plant, all moved to the Prospect street plant. For complainant it is testified that the traffic, when for the latter plant,

is switched by the Pan Handle to an adjoining yard and from this yard to destination is handled by the Belt, while that for the Langsdale avenue plant is moved by the Pan Handle to Belt interchange tracks, thence by the Belt to interchange tracks with the Big Four which carrier effects delivery; that the haul of the Pan Handle varies from 0.125 mile to 1 mile and the aggregate haul in no instance exceeds 6 miles; and that the shipments are not generally weighed, shippers' weights being accepted. According to the testimony offered for defendant, additional out-of-line hauls are required to reach track scales, and in some other respects the description of the movement differs from that given by complainant's witness, but the aggregate length of the hauls based thereon is not disclosed. The loading tracks at the shipping points are constructed on a slight grade, and spotting by the carrier is not required to place the cars at the tipple. Upon being unloaded, most of them were used by complainant for the loading of the outbound shipments.

The following table shows the rates on sand and gravel, and also on other commodities, applying at Indianapolis during various periods from industries on the Pan Handle to industries on certain other lines:

	Sand and gravel to industries on the Belt.	Sand and gravel to industries on the Big Four.	Other commodities to industries on the Belt, Big Four, and other lines.
Prior to June 25, 1918.	10 cents per ton plus \$2 per car.	15 cents per ton plus \$2 per car.	15 cents per ton plus \$2 to \$5 per car.
Effective June 25, 1918.	30 cents per ton plus \$2 per car.	35 cents per ton.....	15 cents per ton plus \$2 to \$5 per car, increased 25 per cent. ¹
Effective January 22, 1919.	15 cents per ton plus \$2 per car, increased 25 per cent. ¹	15 cents per ton plus \$2 per car, increased 25 per cent. ¹	15 cents per ton plus \$2 to \$5 per car, increased 25 per cent. ¹
Effective August 3, 1919.	20 cents per ton plus \$2.50 per car.	20 cents per ton plus \$2.50 per car.	20 cents per ton plus \$2.50 to \$6.50 per car.

¹ Increase applies to aggregate of rates.

Apparently the shipments were charged at the applicable rates except that each of those which moved to the Langsdale avenue plant was overcharged to the extent of \$2. Complainant claims that the charges assailed should not have exceeded the basis effective January 22, 1919.

It will be observed that while the rates under consideration were generally the same as or lower than the rates contemporaneously applying on other commodities moved from industries on the Pan Handle to industries on connecting lines, they were materially higher than such other rates during the period in question. Complainant contends there is no difference in the transportation service in switching these respective commodities and shows that as compared with

sand and gravel, many of those commodities are of greater value, load more lightly, and move industrially at Indianapolis for greater distances. It is testified that the value of sand and gravel is 55 cents per ton and the average weight of complainant's shipments approximately 100,000 pounds. Based on that weight the average charge per car on the shipments in question to the Prospect street plant was \$17 while at the rate established August 3, 1919, it would have been \$12.50.

In *Summit Sand & Gravel Co. v. C., T. H. & S. E. Ry. Co.*, 58 I. C. C., 371, we found that the charge of \$4 per car plus 1 cent per 100 pounds, effective June 25, 1918, for the switching of sand and gravel, in carloads, between industries on the Chicago, Terre Haute & Southeastern, within the switching limits of Terre Haute, Ind., was unreasonable to the extent that it exceeded \$5 per car; and in *Rogers-Brown Iron Co. v. Director General*, 59 I. C. C., 186, we held that the charge of \$2.60 per car plus 1 cent per 100 pounds, effective on the same date, applicable to the movement of limestone, in carloads, on the Pennsylvania Railroad, within the city limits of Buffalo, N. Y., was unreasonable to the extent that it exceeded \$7.50 per car. In each of those cases the charge assailed represented an increase of 1 cent per 100 pounds, the equivalent of 20 cents per ton and reduced rates were later provided. In the *Rogers-Brown Iron Co. Case* it appears that a haul of 1.5 miles was sometimes required but that by the direct route the distance was approximately 0.5 mile. The report in the *Summit Sand & Gravel Co. Case* does not disclose the distances over which the shipments moved but complainant shows that in July, 1918, the rate for switching sand and gravel from industries on the Chicago, Terre Haute & Southeastern to industries on connecting lines at Terre Haute was reduced to \$7 per car and that the average haul in those movements is considerably in excess of the haul in the present case.

In defense of the rates assailed it is asserted that each of complainant's shipments involved a line haul and that the intention of the Railroad Administration at all times was to provide a minimum charge of \$15 per car on traffic which involved a line haul. However, this and other similar contentions here stressed were also made in the *Rogers-Brown Iron Co. Case*, and it need only be said here that the freight rate authority issued by the Director General for the basis subsequently established, expressly directed a reduction of the charges for "inter-terminal switching," defining such a service as "a switching movement from a track of one road to a track of another road when both tracks are within the switching limits of the same station or industrial switching district."

We find that unjust discrimination and undue prejudice have not been established but that the charge for the service in question was unreasonable to the extent that it exceeded 20 cents per ton plus \$2.50 per car; that the shipments were made as described; that while a stranger to the transportation transaction, complainant was in reality the consignee and bore the charges thereon; that it was damaged and is entitled to reparation, with interest, in an amount equal to the difference between the charges paid and those that would have accrued upon the basis herein found reasonable. Complainant should comply with rule V of the Rules of Practice.

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No. 11369.

VAN DUSEN HARRINGTON COMPANY ET AL.

v.

DIRECTOR GENERAL, AS AGENT, CANADIAN PACIFIC
RAILWAY COMPANY, ET AL.

Submitted July 13, 1921. Decided November 3, 1921.

Coarse-grain rates of 76 cents per 100 pounds from points in group F and 64 cents from points in group G, the points of origin being in Minnesota, North Dakota, South Dakota, Nebraska, Kansas, and Iowa, to points in Montana, Idaho, Oregon, and Washington, as increased June 25, 1918, from 50 cents to the wheat-rate basis, found to have been unreasonable to the extent that they exceeded 61 cents. Reparation awarded.

H. C. Wilson, H. A. Feltus, and A. C. Remele for complainants.

J. N. Davis, John F. Finerty, and Thomas M. Woodward for defendants.

REPORT OF THE COMMISSION.

DIVISION 4, COMMISSIONERS MEYER, DANIELS, AND POTTER.

DANIELS, *Commissioner*:

Exceptions were filed by all of the parties to the report proposed by the examiner and oral argument has been had.

The complaint is that the rates on coarse grain, including corn, oats, rye, barley, and speltz, from groups F and G in Minnesota, the Dakotas, Iowa, Nebraska, and Kansas to points in Washington, Oregon, Montana, Idaho, and Canada, as increased June 25, 1918, in accordance with general order No. 28 of the Director General of Railroads, were unreasonable to the extent that they exceeded 56 cents per 100 pounds prior to August 26, 1920, the effective date of the general increases of 1920 under Ex Parte 74; and that since and including that date they have been unreasonable to the extent that they exceeded 56 cents appropriately increased in accordance with that proceeding. Reparation is asked. Rates are stated herein in cents per 100 pounds. We have jurisdiction of the rates on shipments to Canada only so far as the movement was within the United States.

The rates effective June 25, 1918, were 76 cents from group F and 64 cents from group G, and these rates were later reduced to 61 cents from both groups, as will presently appear. All the rates specifically referred to herein are those in effect subsequent to June 25, 1918, and prior to August 26, 1920. Group F embraces North Dakota and South Dakota east of the Missouri River and Minnesota west of the

line of the Chicago, St. Paul, Minneapolis & Omaha from Duluth, Minn., and Superior, Wis., to Sioux City, Iowa, and a strip of extreme western Iowa from 25 to 60 miles wide which narrows gradually to Council Bluffs, Iowa, together with the Missouri River crossings, Omaha, Nebr., and Kansas City, Mo. Group G embraces Kansas and Nebraska with the exception of the western parts of those states, and with the exception also of the Missouri River crossings named. The group rates were applicable in the absence of lower rates from specific stations named in other parts of the sectional-plan tariff. The rates to Canada are made by adding fixed arbitraries, the reasonableness of which is not questioned, to the rates to the Pacific coast points.

On June 25, 1918, the rate on coarse grain was increased from 50 cents from groups F and G, the increased rates being, as stated, 76 cents from group F and 64 cents from group G. Contemporaneously the wheat rates were increased from 70 cents to 76 cents from group F and from 58 cents to 64 cents from group G. In other words, the coarse-grain rates were increased not only 6 cents, as were the wheat rates, but in addition they were increased to the wheat-rate basis. From many, if not most, of the points in groups F and G, including Minneapolis, Minn., in group F, there was a special rate of 55 cents on wheat, and this rate was increased on June 25, 1918, to 61 cents. On August 30, 1918, the rates on coarse grain from these latter points were reduced from 76 cents in group F and 64 cents in group G to 61 cents. On October 14, 1918, via federally controlled lines, and on November 14, 1918, via lines not under federal control, the rates on both wheat and coarse grain from the remaining points in groups F and G were, for competitive reasons, likewise reduced to 61 cents. The rate on barley was reduced to 61 cents on December 26, 1918, to Pacific coast points, and on February 28, 1919, to Montana. As a result of these various changes the 61-cent rate now applies, generally speaking, from all points in groups F and G to the territory in question, except that from certain points in western Minnesota and in North Dakota, west of the former 55-cent points, the rate is 56 cents, having been increased from 50 cents on June 25, 1918, and except also that from points on the Minneapolis & St. Louis the rate is higher than 61 cents, because there are no joint rates in effect and combinations of separately established intermediate rates apply. From points west of the present 56-cent territory—that is, west of the group territory here in issue—the rates range down to 46 cents.

The 61-cent rate in its application to wheat is not attacked. There is no objection on the part of complainants to the coarse-grain rate being the same as on wheat provided that the level of the rate on

coarse grain is not made higher than 56 cents subject to the increases under Ex Parte 74.

Most of the shipments on which reparation is sought were made first to Minneapolis at the local rate, and were later reconsigned or reshipped at the balance of the through rate or on a proportional rate, both of which were equal to the difference between the through rate from the original point of shipment to final destination and the local rate from the original point of shipment to Minneapolis. Under the transit arrangements in effect at Minneapolis the inbound grain could be stored for 12 months before shipment out at the balance of the through rate or under proportional rates as described. Some of the shipments were made direct from the point of origin to destination without going through Minneapolis. Other shipments were made locally from Minneapolis at the rate of 61 cents.

It is the contention of complainants that the westbound rates on wheat should not be the measure of the proper westbound rates on coarse grain, because the westbound wheat rates move traffic only under exceptional conditions, such as the drought in Montana in 1919, to which complainants ascribe the westbound movement of 64 cars over the Chicago, Milwaukee & St. Paul in that year, referred to by defendants. For defendants it is asserted that wheat is shipped westbound in substantial quantities for blending with wheat grown farther west in the Pacific coast manufacture of flour; also, that very little wheat now moves eastbound under the 56-cent rate cited by complainants.

Complainants compare the rate of 76 cents on coarse grain westbound from group F with the rate of 56 cents on wheat and barley eastbound between the same points, and contend that, as the movement of coarse grain predominates westbound just as the movement of wheat predominates eastbound, and as the value of the coarse grain is less than that of wheat, and further, as the total volume of shipment of coarse grain westbound is much greater than the total volume of shipment of wheat eastbound, the westbound rate on coarse grain should not exceed the eastbound rate on wheat, especially when the latter rate, in addition to being 5 cents less than the westbound wheat rate, decreases with the lesser distance from the origin points farther east, while the westbound coarse-grain rate is blanketed over a much larger area. Complainants also refer to the fact, in this connection, that prior to June 25, 1918, the rates were the same in both directions on the grain that actually moved in substantial quantities, that is, they were 50 cents on the eastbound wheat and barley and 50 cents on the westbound coarse grain, an equality that was destroyed by the increase on that date of the west-

bound coarse-grain rate to 76 cents from group F and 64 cents from group G, and by the increase on the same date in the eastbound wheat rate to only 56 cents, as previously explained.

Complainants direct attention to a situation illustrated by car-mile earnings on wheat from Minot, N. Dak., to Portland, Oreg., lower than from Minneapolis to 102 Pacific coast destinations, although Minot is 465 miles west of Minneapolis and the transportation for that excess distance from Minneapolis to Minot is through a more densely populated territory than is the transportation west of Minot. From Minot to Portland the rate is 46 cents, the distance 1,482 miles, and the car-mile revenue 22.4 cents, while from Minneapolis to the 102 points the rate is 61 cents, the distance 1,491 miles, and the car-mile revenue 29.55 cents. Complainants point out in this connection that while the westbound rate of 61 cents from Minneapolis is 15 cents greater than from Minot for a difference of 465 miles the eastbound rate from Seattle, Wash., is only 5 cents higher than from Sand Point, Idaho, for a difference of 414 miles.

According to the computations of complainants the average haul of the shipments listed in the complaint via Minneapolis was 1,724 miles, and the ton-mile yield under the 61-cent rate was 7.1 mills, and under the requested 56-cent rate, 6.5 mills. The average distance of 1,724 miles is obtained by adding to the average distance of 233 miles from 176 points of shipment of one of the complainants in South Dakota, Minnesota, and Iowa to Minneapolis the average distance of 1,491 miles from Minneapolis to 105 points of destination in Washington, Oregon, Idaho, Montana, and British Columbia. The average distance from 11 points in groups F and G to Portland, Seattle, and Spokane, Wash., is shown by defendants as 1,967 miles, and the ton-mile yield under the 61-cent rate is shown as 6.2 mills. The distance shown is a general average of the average distances between specific points over different routes, and is criticized by complainants because of the selection of points in the eastern parts of groups F and G, and in Washington and Oregon, which represent the longer hauls; because many of the routes reflected in the average are said to be circuitous and impracticable; and because the rates shown are said to be not applicable over many of the routes indicated. For comparative purposes complainants refer to the following rates, among others, on wheat and coarse grain, directing particular attention to the 56-cent rate from Seattle to St. Louis, Mo., for 2,342 miles, and from Salt Lake City, Utah, to Evansville, Ind., for 1,592 miles, which latter rates, however, are proportional rates applicable on shipments to the southeast:

From—	To—	Distance.	Rates.
		<i>Miles.</i>	<i>Cents.</i>
Butte, Mont.	Tacoma, Wash.	1,074	34.5
Minot, N. Dak.	do.	1,338	46
Bismarck, N. Dak.	St. Paul, Minn.	445	20
Polson, Mont.	do.	1,327	41
Butte, Mont.	Sioux City, Iowa.	1,334	38
Sand Point, Idaho.	do.	1,496	44
Spokane, Wash.	do.	1,571	56
Seattle, Wash.	do.	1,909	56
Salt Lake City, Utah.	Evansville, Ind.	1,592	56
Denver, Colo.	Chicago, Ill.	1,083	43
San Francisco, Calif.	Minneapolis, Minn.	2,150	68.5
Butte, Mont.	San Francisco, Calif.	1,317	49.5
Minot, N. Dak.	do.	1,582	61
Bismarck, N. Dak.	Chicago, Ill.	842	31
Polson, Mont.	do.	1,724	48.5
Butte, Mont.	St. Louis, Mo.	1,776	46.5
Sand Point, Idaho.	do.	1,938	56
Spokane, Wash.	do.	2,013	56
Seattle, Wash.	do.	2,342	56
Salt Lake City, Utah.	Kansas City, Mo.	1,267	51
Denver, Colo.	St. Louis, Mo.	923	40

Defendants assert that the eastbound rate of 50 cents on wheat which obtained prior to June 25, 1918, was established as the result of water-and-rail competition, and that the westbound rates of 50 cents and 55 cents which obtained from some of the points in groups F and G prior to June 25, 1918, were due to the endeavor of the carriers to meet the competition of Canadian wheat, which moved on a low rate from Winnipeg, Manitoba, to Vancouver, British Columbia, thence to Pacific ports via steamship. They refer to the fact that the minimum under these rates was the marked capacity of the car, instead of the general minimum of 60,000 pounds, and to the further fact that these rates were usually for one-line hauls and were not applicable from points on connecting lines, the group rate or the lowest combination of separately established intermediate rates having applied from the latter points. Defendants also assert that the rate of 50 cents which was in effect westbound on coarse grain prior to the date mentioned was established many years ago on a low basis because of the desire of the carriers to aid in the development of the north Pacific coast territory, although the competition of corn imported from Manchuria and the competition of locally raised oats and barley are also said to have been moving influences.

The 61-cent rate from groups F and G to the north Pacific coast territory is not regarded as unreasonable by defendants when compared with the rate of 64 cents from Kansas and Nebraska points in the same groups to California points, to which basis they suggest that the former rate might very properly be increased, in view of the fact that rates generally are the same to the north coast and the California terminals from groups F and G. Nor is the 61-cent rate regarded by them as unreasonable when compared with the rate of 59 cents on corn and oats from Omaha to certain Arizona points,

which we held, in *Updike Elevator Co. v. C., R. I. & P. Ry. Co.*, 38 I. C. C., 687, prior to the increase of June 25, 1918, was not unreasonable, or when compared with the rate of 73 cents from Omaha to Phoenix, Ariz. Reference is also made to our finding in *Kansas-California Flour Rates*, 32 I. C. C., 602, that the rate of 75 cents on flour from points in Kansas and Nebraska to California and Arizona points was reasonable, and that the wheat rate should not be more than 8 cents less than on flour, or 67 cents. The old relationship was 65 cents on flour and 58 cents on wheat.

Compared with some of the eastbound and westbound rates on wheat and coarse grain, to which reference has been made, the 61-cent rate, if those rates be accepted as reasonably high, may seem to be somewhat too high for coarse grain. On the other hand we have recently held that the wheat rates throughout this general north-western territory might properly apply on coarse grain. *Rates on Grain and Grain Products*, 56 I. C. C., 133; 56 I. C. C., 689. *National Council Farmers' Assos. v. Director General*, 56 I. C. C., 399. It should also be considered that most of the shipments from the general territory of origin affected move through Minneapolis under transit regulations, which permit of the storage of wheat for 12 months before outbound shipment, although it appears that transit is also accorded in respect of some of the eastbound rates cited. The 61-cent rate is lower than from Kansas and Nebraska points to California terminals, and is lower than the group rates on wheat from groups F and G which obtained prior to June 25, 1918. In other words, the 61-cent rate does not represent the group-F wheat rate as increased from 70 cents to 76 cents, or the group-G rate as increased from 58 cents to 64 cents, on June 25, 1918, but represents the 55-cent rate, which applied from Minneapolis and main-line points for some distance west thereof, and which was an exception from the general group basis, as increased on the date mentioned to 61 cents. In *Northern Grain & Warehouse Co. v. Director General*, 57 I. C. C., 629, we held that the rate of 76 cents as applied to oats originating in South Dakota and shipped to Portland and Tacoma under transit at Minneapolis was unreasonable to the extent that it exceeded the subsequently established rate of 61 cents. The latter rate was not attacked.

Upon all the facts we find that the rates of 76 cents from group F and 64 cents from group G, which became effective June 25, 1918, were unreasonable prior to August 26, 1920, to the extent that they exceeded 61 cents, as applied to coarse grain; that complainants made shipments of coarse grain under those rates and paid and finally bore the freight charges thereon when the shipments were made direct from point of origin to destination, and paid and finally

bore charges at the balance of the through rate as the outbound proportional rate when shipments were given transit service at Minneapolis; and that they have been damaged to the extent that the charges paid exceeded those that would have accrued at the rate herein found to have been reasonable; and are entitled to reparation. The exact amount of reparation can not be determined upon this record and complainants should comply with rule V of the Rules of Practice.

64 I. C. C.

No. 12018.¹

CITY OF NEW ALBANY, IND., ET AL.

v.

LOUISVILLE & NORTHERN RAILWAY & LIGHTING
COMPANY.

Submitted August 1, 1921. Decided November 3, 1921.

Passenger fare between Louisville, Ky., and New Albany, Ind., found unreasonable and findings made as to reasonable maximum fares for the future.

Charles L. Jewett, Walter V. Bulleit, and Sherman Minton for complainants.

Robert G. Gordon and J. S. Laurent for defendant.

REPORT OF THE COMMISSION.

DIVISION 4, COMMISSIONERS MEYER, EASTMAN, AND POTTER.

BY DIVISION 4:

Exceptions were filed by the defendant to the proposed report of the examiner.

Complainants are the City of New Albany, Ind., its mayor, its Chamber of Commerce, and other organizations representing the people of New Albany. By complaints, filed December 17 and 18, 1920, as amended, it is alleged that the passenger fare of 10 cents charged by the defendant since November 1, 1920, for the transportation of passengers between the cities of Louisville, Ky., and New Albany, Ind., was, is, and for the future will be unreasonable. We are asked to prescribe 7 cents as a reasonable fare to be charged for the future.

At the time of the hearing the defendant corporation operated two separate and distinct divisions of interurban electric railway which have no physical connection. The line connecting the city of Louisville, Ky., and the city of New Albany, Ind., is called the Daisy division and is the only one with which we are concerned here. A line from the northern limits of the city of Jeffersonville, Ind., to Sellersburg, Ind., a distance of 9.58 miles, which forms a part of the through line between the cities of Louisville and Indianapolis, Ind., and a branch extending from Watson Junction, a station be-

¹ This report also embraces No. 12018 (Sub-No. 1), Chamber of Commerce of New Albany, Ind., et al., v. Same.

tween Jeffersonville and Sellersburg, to Charlestown, Ind., a distance of 6.86 miles, constitute the Northern division. The Northern division is referred to merely because some of the operating expenses of the defendant as a whole are apportioned between the two divisions. New Albany and Jeffersonville are situated on the north bank of the Ohio River opposite Louisville, being connected with that city by different bridges. An interurban electric railway formerly owned by the Louisville & Southern Indiana Traction Company, hereinafter called the Louisville & Southern, operates between Louisville and Jeffersonville. This company also operated the street-railway system of New Albany and various other lines. Since the hearing the Interstate Public Service Company, an Indiana corporation, which controlled the defendant and the Louisville & Southern through stock ownership, has, with the permission of the Public Service Commission of Indiana, acquired all the rights and property of defendant and the Louisville & Southern and now operates the lines formerly operated by those companies.

For convenience we shall continue to refer to the defendant and to the Louisville & Southern as if they were still separate operating companies. By fifteenth section applications filed in March, 1918, the Louisville & Southern and the defendant asked authority to increase the fares for the transportation of passengers between Louisville and Jeffersonville, and between Louisville and New Albany, respectively, from 5 cents to 10 cents, with provision for the sale of commutation tickets at 7 cents per trip. Upon hearing, we found that a fare of 7 cents would be reasonable for the transportation of passengers between Louisville and Jeffersonville and between Louisville and New Albany, and the applications were granted to that extent by order dated March 10, 1919. *Louisville Passenger Fares*, 52 I. C. C., 366. The record in that proceeding was by stipulation made a part of the record in this case. Following the above decision, the defendant filed its passenger-fare tariff effective April 16, 1919, putting into effect a fare of 7 cents. About a year later the defendant filed a new tariff, effective April 3, 1920, by which it put into effect a cash fare of 10 cents, with a fare of 7 cents per trip to persons purchasing books containing 12 trip tickets. Effective November 1, 1920, the defendant filed another tariff, naming a fare of 10 cents for all passengers and discontinuing the sale of commutation tickets.

The Daisy division operates exclusively between the cities of Louisville and New Albany. It does not carry any local city passengers in the city of Louisville, and carries no freight. The line extends from a terminal in the center of the business district of Louisville 3.51 miles over the tracks of the Louisville Railway Company,

an electric street railway operating in Louisville, over the bridge of the Kentucky & Indiana Terminal Railroad Company, a distance of 1.08 miles including the approaches, and over 0.17 mile of track of the Louisville & Southern to a station in New Albany, a total distance of 4.76 miles. The time schedule is 25 minutes. No transfers are issued or accepted. The terminal in New Albany is not centrally located. Both terminals are owned by the Louisville & Southern.

The physical property owned by the defendant and used in the operation of the Daisy division consists of double tracks on the approaches to and one of the double tracks over the bridge; the overhead distribution system on the bridge, including the approaches; a corrugated-iron car barn 45 feet wide by 110 feet long containing switch and storage tracks and overhead wiring located near the north end of the bridge, and erected on real estate owned by the Louisville & Southern; four electric cars; and a portion of the equipment on five electric cars and seven trailers leased from the Louisville & Southern. The value of the property owned is probably not in excess of \$50,000 or \$60,000.

Trackage rights, power, and the use of the bridge are obtained under contracts. The bridge is also used by several steam roads. The contract with the Louisville Railway Company, with which defendant is not affiliated in any way, which includes trackage rights and power, was made June 21, 1907, and covers a period of 20 years from that date. Under the terms of this contract the defendant agreed to make annual payments to the Louisville Railway Company beginning with \$26,000 and increasing periodically. The present annual payment is \$30,000, and from June 1, 1922, to the expiration of the contract the annual payment will be \$32,000. These amounts are based upon a maximum of 75 single passenger trips daily each way and in case more trips are made on any day the amounts above referred to are to be proportionally increased. It is stated, however, that the maximum of 75 trips has rarely been exceeded. The above amounts are also based on a charge by the defendant of 5 cents per passenger, in effect when the contract was made, and it is provided that in the event a greater fare is charged the Louisville Railway Company is to have one-third of the excess over 5 cents in addition to the amounts above mentioned. The contract with the bridge company was made October 5, 1906, and covers a period of 25 years. It provides for the payment by defendant of 1 cent for each passenger carried, with a minimum amount to be paid of \$15,000 per year for the first five years; \$17,500 per year for the next five years; and \$20,000 per year for the remaining 15 years. This \$20,000 minimum, now in effect, has always been exceeded. Defendant purchases its electric power used in its overhead distribution system from the

United Gas & Electric Company, its subsidiary, which in turn purchases it from the Louisville Gas & Electric Company. The rate paid by defendant to the United Gas & Electric Company for power is fixed by the Public Service Commission of Indiana, and, as this record shows, has represented practically the cost to the United Gas & Electric Company. Since the hearing, by order of the Public Service Commission of Indiana, the rate paid by the defendant was increased by 1 mill per kilowatt hour. The defendant pays the Louisville & Southern \$754.19 per annum for its use of the interurban stations in Louisville and New Albany, \$300 per annum for trackage rights, and \$7,200 per annum for the use of five cars and seven trailers. No contracts between the defendant and the Louisville & Southern were introduced.

To show that its operating expenses have increased, the defendant submits a statement of its total operating expenses, including taxes, for the Daisy division for the periods indicated below; together with its net earnings and losses:

Year ending—	Operating expenses.	Net earnings. ¹	Year ending—	Operating expenses.	Net earnings. ¹
June 30, 1916.....	\$106, 102. 80	<i>\$4, 684. 39</i>	Dec. 31, 1919.....	\$156, 325. 15	\$7, 960. 91
Dec. 31, 1917.....	110, 054. 12	7, 920. 03	Dec. 31, 1920.....	185, 836. 50	9, 071. 23
Dec. 31, 1918.....	116, 747. 92	<i>4, 931. 72</i>			

¹ Figures in italic denote deficit.

To show the increase during the year 1920, by months, the following was submitted by the defendant:

	Operating expenses.	Net earnings. ¹		Operating expenses.	Net earnings. ¹
January, 1920.....	\$13, 585. 17	<i>\$737. 46</i>	August, 1920.....	\$15, 986. 61	\$550. 90
February, 1920.....	13, 938. 25	<i>317. 62</i>	September, 1920.....	15, 896. 44	637. 83
March, 1920.....	13, 734. 59	1, 296. 69	October, 1920.....	16, 840. 40	<i>1, 430. 64</i>
April, 1920.....	13, 849. 55	3, 127. 50	November, 1920.....	17, 815. 65	1, 952. 10
May, 1920.....	15, 336. 15	1, 144. 78	December, 1920.....	17, 964. 99	1, 776. 03
June, 1920.....	14, 859. 22	141. 49			
July, 1920.....	15, 196. 94	182. 74	Total.....	185, 003. 96	9, 799. 46

¹ Figures in italic denote deficit.

It is noted that there is a discrepancy of \$832.54 between the operating expenses, and \$728.18 between the net earnings, shown for the year 1920, and the totals of the operating expenses and net earnings, respectively, shown for the separate months of that year.

Figures were submitted showing a comparison of the operating expenses on the Daisy division for the years 1918 and 1920, as follows:

	1918	1920
Ways and structures.....	\$1,182.24	\$2,104.52
Equipment.....	7,411.35	10,792.15
Power.....	18,411.53	5,730.90
Conducting transportation.....	27,818.62	44,035.23
Traffic.....	420.49	862.88
General and miscellaneous.....	60,206.11	120,389.87
Taxes.....	1,297.58	1,920.90
Totals.....	116,747.92	185,836.50

The decrease in the amount charged to power is due to the fact that in 1918 the defendant divided the amount paid to the Louisville Railway Company which included trackage rights and power, and charged a portion to rent of tracks and facilities under the heading "general and miscellaneous" and the remainder to power. Subsequently the total amount of the payments to the Louisville Railway Company were charged to rent of tracks and facilities and the power account was charged only with power separately purchased.

The increase in the charge for conducting transportation was due in large measure to increases in the compensation of conductors, motormen, and trainmen. This item for the Daisy division is shown as \$19,269.34 in 1918 and \$31,844.88 in 1920. At the hearing and argument it was stated for the defendant that no decrease in the scale of wages was anticipated. Since the argument we are advised by the defendant, however, that the large decrease in passenger traffic has caused the company to determine upon a reduction of 3 cents per hour in trainmen's wages, which it is estimated will result in a total reduction of about \$2,100 per year. The number of revenue passengers on the Daisy division was 2,398,692 in 1918, 2,542,794 in 1919, and 2,414,868 in 1920. A statement submitted at the argument shows that during the first six months of 1921 the number of revenue passengers carried on the Daisy division was 1,057,938. A rough estimate of the number of passengers for the year may be made by multiplying this figure by 2, the result being 2,115,876.

The great increase in "general and miscellaneous" expenses in 1920 over 1918, shown above, is due principally to the charging under this heading of power formerly included in the power account, and to increased payments made to the Louisville Railway Company representing one-third of the fare per passenger in excess of 5 cents.

An examination of defendant's income account for the years 1918, 1919, and 1920 discloses that the operating revenues of the two divisions are kept in separate accounts. The revenue from other than railway operations is also kept separately, with the exception of one small item, which is apportioned on a passenger basis. The accounts

are kept so that it is possible to assign certain items of expense to the Daisy division direct, but in most instances the operating expense accounts cover the operations of the company as a whole and it is necessary to apportion the expenses between the two divisions.

We have no serious criticism of the apportionment of expenses made by the defendant except in so far as it affects the items under the heading "general and miscellaneous," which include salaries and expenses of general officers and clerks, law expenses, injuries and damages, stationery and printing, and rent of track, facilities, and equipment, and some others. The item of rent of tracks, facilities, and equipment under this heading is apportioned between the two divisions substantially direct. For the year 1920 the total expense for rental of track facilities and equipment was \$89,629.52, of which \$86,059.04, or 96.02 per cent, was charged to the Daisy division, and therefore, all the other items under this heading, which totaled \$35,753.83 and included \$18,106.69 for injuries and damages, were apportioned 96.02 per cent to the Daisy division and 3.98 per cent to the Northern division. It would appear that 96.02 per cent of the "general and miscellaneous" expenses was an excessive amount to charge to the Daisy division and that a fairer basis of apportionment, except for injuries and damages, would be upon the basis of earnings, the earnings of the Daisy division having been 67.2 per cent of the total earnings of the company for 1920. The charges for injuries and damages in 1920, which are greatly in excess of similar items in preceding years shown of record, should have been made direct against the division upon which the injury or damage occurred. Such an apportionment, however, is not available. In this connection the defendant contends that the fact that the Daisy division operates through the congested section of Louisville, while the Northern division operates only in the country and through small towns, argues for a greater amount of injury and damage claims on the former.

Upon attempting to arrive at an estimate of the earnings and expenses of the Daisy division for the year 1921 we are confronted with the question of what basis to use. We have the figures for several previous years, which show a marked increase in expenses from year to year, and the figures for the 12 months of 1920, which show a marked increase from month to month, upon which variations in the volume of business do not seem to have had any material effect. Ordinarily the operating expenses for an entire year, or the average for several years, would afford a better basis for estimating the expenses for another year than by the use of some shorter period. But in view of existing conditions, and the increase in expenses by years up to 1920 and by months up to December,

1920, and the fact that there does not appear to be any factor in sight, other than the reduction in wages above referred to, which will cause any substantial decrease in expenses in the immediate future, it is thought not improper to use December, 1920, as the basis for our estimate.

If we assume that the total number of revenue passengers on the Daisy division in 1921 will be 2,116,000 and that each were to pay a 10-cent fare, the total revenue from transportation would be \$211,600. The Daisy division receives certain additional operating revenue from station and car privileges and rent of buildings and other property, which for the month of December, 1920, amounted to \$117.82. Twelve times this is \$1,413.84, which, added to the revenue from transportation, would make a total operating revenue of \$213,013.84 for the year.

The following is an estimate of the operating expenses and taxes of the Daisy division for 1921 if the 10-cent straight fare is continued in effect, the expenses, except rent of tracks, facilities, and equipment, being based on the figures for December, 1920.

Way and structures.....	\$158. 41	
Equipment.....	791. 23	
Power.....	536. 47	
Conducting transportation.....	4, 630. 36	
Traffic.....	93. 03	
General and miscellaneous (see note).....	894. 77	
Taxes.....	190. 53	
Total for December, 1920.....	7, 294. 80	
Expenses and taxes for 12 months.....		\$87, 537. 60
To Louisville Railway Company:		
Annual payment.....	\$30, 000. 00	
One-third of 5 cents per passenger.....	35, 266. 67	
		65, 266. 67
For use of bridge, 1 cent per passenger.....		21, 160. 00
To Louisville & Southern:		
Rent for equipment.....	\$7, 200. 00	
Trackage rights.....	300. 00	
Terminal rent, etc.....	754. 91	
		8, 254. 91
Total estimated expenses, except injuries and damages.....		182, 219. 18
Estimated reduction in wages.....		2, 100. 00
Net estimated expenses.....		180, 119. 18
Total estimated operating revenue.....		213, 013. 84
Net estimated operating revenue.....		32, 894. 66

NOTE.—General and miscellaneous, exclusive of rent of tracks, facilities, and equipment and injuries and damages, apportioned to Daisy division on basis of earnings for year, at 67.2 per cent.

If we compute the revenues and expenses in the same way at the cash fare of 10 cents and the commutation fare of 8 cents, proposed by the examiner, assuming that 70 per cent of the passengers pay the commutation fare and 30 per cent the cash fare, which past experience indicates would be a proper assumption, the net revenue would be \$13,145.33. At a cash fare of 10 cents and a commutation fare of 9 cents the net revenue would be \$23,020. None of these figures include any allowance for injuries and damages. It should also be remembered that beginning June 1, 1922, the basic rental paid to the Louisville Railway Company will, under the contract, be increased by \$2,000 per year.

The complainants contend that the rental paid to the Louisville Railway Company is excessive but there is no substantial evidence in support of this contention. The contract in question was entered into 14 years ago when conditions were entirely different from those existing at present and it seems that conditions which would justify increased charges for the defendant would also justify an increase in the compensation paid to the Louisville Railway Company for furnishing the major portion of the tracks and power that the defendant uses. It would, therefore, appear that the terms of the contract were dictated by ordinary business prudence and this record affords no basis for condemning them.

The defendant insists that the terms of both the contract with the Louisville Railway Company and with the bridge company are better than could be obtained if the contracts were being made at this time and are things of value both to the company and to its patrons, which should be given consideration in arriving at a reasonable fare. In this connection it is shown that interurban companies entering Indianapolis, Ind., and using the tracks and power of the Indianapolis Street Railway for generally shorter distances than defendant uses the tracks of the Louisville Railway Company, pay 4 cents per passenger to the street-railway company. The total rent that would be paid by defendant to the Louisville Railway Company under a 10-cent fare, of \$65,266.67, shown above, equals 3.08 cents per passenger. At the lower rates of fare this figure would be somewhat less. The defendant also showed that the toll for pedestrians crossing the bridge from Louisville to New Albany is 5 cents and that the steam-railroad fare across the bridge is 30 cents. The defendant further shows that it does no street-railroad business, all passengers which it carries traveling substantially the full length of its line and contends that the value of the service rendered by it justifies a fare of 10 cents. It calls attention to the fact that on all interurban electric lines operating in Indiana the fare is 3 cents per

mile except on the line from Louisville to Indianapolis on which it is 2.75 cents per mile with a minimum charge of 10 cents.

In *City of Steubenville, Ohio, v. Tri-State R. & E. Co.*, 38 I. C. C., 281, decided March 14, 1916, we found a commutation fare of \$3.70 for 52 rides, or slightly over 7.1 cents per trip, to be a reasonable maximum charge on an electric interurban line between Steubenville, Ohio, and Follansbee, W. Va., a distance of 2.9 miles involving transportation across a bridge spanning the Ohio River. In *City of East Liverpool, Ohio, v. S., E. L. & B. V. T. Co.*, 51 I. C. C., 563, decided December 4, 1918, we approved a single-trip cash fare of 10 cents and a commutation fare of \$1 for 14 trips, or slightly over 7.1 cents per trip from East Liverpool, Ohio, to Chester, W. Va., a distance of 2.9 miles and also involving transportation over a bridge across the Ohio River.

Upon a consideration of all the facts and circumstances of record we are of opinion and find that the fare of 10 cents here assailed is, and for the future will be, unreasonable to the extent it exceeds or may exceed 10 cents per passenger for a single trip and a commutation fare of 9 cents per passenger upon the purchase of not exceeding 12 tickets.

As the defendant is no longer an operating company and as the company at present operating what was formerly defendant's Daisy division is not a party to this proceeding no order will be entered. If the findings herein are not promptly complied with the complainants may call the matter to our attention for such further action as may be deemed appropriate.

No. 11396.¹
MASON VALLEY MINES COMPANY
v.
WESTERN PACIFIC RAILROAD COMPANY ET AL.

Submitted March 28, 1921. Decided November 16, 1921.

Rates on ore and concentrates, in carloads, from Paxton and Engels, Calif., to Wabuska, Nev., found unreasonable. Reasonable maximum joint rates prescribed for the future.

S. W. Belford, N. P. Rathvon, and James D. Finch for complainants.

John F. Shaughnessy for Public Service Commission of Nevada and *E. H. Walker* for Reno Chamber of Commerce, interveners.

Allen P. Matthew, McCutchen, Willard, Mannon & Greene, F. W. M. Cutcheon, and Frank Marsh for Western Pacific Railroad Company; *F. B. Austin, F. H. Wood, C. W. Durbrow, Elmer Westlake, and Charles Franklin* for Southern Pacific Company; and *Frank Lyon* for Indian Valley Railroad Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

AITCHISON, Commissioner:

The issues in this case were made the subject of a proposed report by the examiner. Exceptions were filed thereto by all parties and the case was argued orally before us. We have reached conclusions differing somewhat from those suggested by him.

Mason Valley Mines Company, complainant in No. 11396, is a corporation organized under the laws of the state of Maine, and is the owner of a smelter at Wabuska, in western Nevada, on the Mina-Hazen branch of the Southern Pacific Company's lines. By complaint filed April 14, 1920, it alleges that the combination rates on ore and concentrates from points in Plumas county, Calif., on the Western Pacific and Indian Valley railroads, to Wabuska are unreasonable and unduly prejudicial, and asks that reasonable joint through rates be established for the future. By complaint filed June 1, 1920, complainants in Sub-No. 1 allege that they are the owners of or interested in certain copper-mining properties in Plumas

¹ This report also embraces No. 11396 (Sub-No. 1), *G. H. Goodhue et al. v. Same.*
64 I. C. C.

county. The issues raised by this complaint are similar to those in No. 11396, except that rates from Western Pacific points only are involved. The evidence produced by the Mason Valley Mines Company was adopted by the complainants in Sub-No. 1 as their own and they introduced no other proof. The Public Service Commission of Nevada and the Reno Chamber of Commerce intervened in support of the complaint. Unless otherwise indicated the term complainant will refer to the Mason Valley Mines Company.

The smelter at Wabuska is situated substantially in the center of a mineralized zone containing low-grade copper ores. This zone extends from Mina and Luning, Nev., in a general northwesterly direction to Plumas county. The ores are of the oxide and sulphide varieties, the formation usually being such that the oxide ores are mined before the sulphide ores are reached. The low value of the ores restricts their movement to distant smelters, except when of greater than average value or when shipped in the form of concentrates. Only the sulphide ores are susceptible of concentration.

Complainant constructed the Wabuska smelter as a private plant for the reduction of ores produced by its mines in the Mason Valley, but now desires to operate it as a custom smelter. In order to fit the plant to handle properly both ore and concentrates it is necessary to install reverberatory furnaces, as the present blast furnace is not adapted to the smelting of concentrates. Complainant is able and willing to make the additional investment, but states that the ore and concentrates now available to it are insufficient to justify an expenditure which, it estimates, will necessarily amount to about \$500,000. It therefore desires access to Plumas county ores and concentrates.

The Plumas county district is served by the Western Pacific in connection with the Indian Valley Railroad, an originating line 22 miles in length, which joins the main line of the Western Pacific at Paxton, Calif., and has its northern terminus at Engels, Calif. The Indian Valley is controlled by the Engels Copper Mining Company, located at Engels, the principal producer and shipper of copper concentrates in the district. The record indicates that there is some financial connection between the Western Pacific and the Indian Valley, and the annual reports of the two carriers on file with us show that three directors of the former are also directors of the latter. The rails of the Indian Valley are leased from the Western Pacific at an annual rental of \$50,042.91.

Little copper ore has been shipped from the Plumas county district but considerable quantities of concentrates produced there have normally been shipped to Utah smelters. The Engels product, about 100 tons daily, is smelted at Garfield, Utah, under a two-year contract

which took effect in 1920. Concentrates produced by the Walker Mining Company, the second largest Plumas county shipper, amounted to about 50 tons daily when that plant was in operation, and were delivered to the Western Pacific near Portola, Calif., for movement to the smelter at International, Utah. The Engels concentrates average about \$100 per net ton in value, and those produced by the Walker Company from \$60 to \$70. On all this traffic the Western Pacific obtains a main-line haul in excess of 600 miles. None of the copper products of Plumas county have ever moved to Wabuska.

The short route from Paxton to Wabuska is 182 miles in length, and includes hauls of 97 miles over the Western Pacific to Reno, Nev., and of 85 miles over the Southern Pacific from Reno to Wabuska. The Western Pacific's portion consists of a main-line haul of 64 miles to Reno Junction, Calif., and a 33-mile haul over its branch line to Reno; and that of the Southern Pacific of main-line and branch-line hauls of 45 and 40 miles, respectively, to and beyond Hazen, Nev. Another practicable route to Wabuska is via Flanigan, Nev., a point on the main line of the Western Pacific 106 miles east of Paxton, thence over the Fernley-Lassen branch of the Southern Pacific to Fernley, Nev., a distance of 60 miles, and thence east to Hazen over the main line for a distance of 12 miles. The distance to Wabuska via Flanigan is 218 miles, 36 miles greater than via Reno.

The rates to Garfield from Engels and Paxton, which may be taken as representative of the rates which move the Plumas county products to Utah smelting points, are joint rates, both the Indian Valley and the Bingham & Garfield railroads being parties with the Western Pacific to the first, and the Bingham & Garfield alone joining the Western Pacific as to the latter. Those to Wabuska are combination rates composed of commodity rates from Engels to Paxton, class rates from Paxton to Reno, and commodity rates from Reno to Wabuska. The following table shows the present rates on ore and concentrates for values not over \$150 per net ton from Paxton and Engels to Garfield and rates from the same points to Wabuska with the factors thereof: The applicable minimum weights are 40,000 pounds except as noted. Throughout this report rates will be shown in amounts per ton of 2,000 pounds, and will, unless otherwise indicated, apply to ore or concentrates of a value of \$100.

Value of ore.	Paxton to Garfield, 636 miles.	Engels to Garfield, 658 miles.	Engels to Paxton, 22 miles. ¹	Paxton to Reno, 97 miles. ²	Reno to Wabuska, 85 miles. ³	Paxton to Wabuska, 182 miles.	Engels to Wabuska, 204 miles.
\$20 per ton.....	\$6.85	\$7.85	\$3.10	\$7.50	\$1.375	\$8.875	\$11.975
\$30 per ton.....	7.10	8.10	3.10	7.50	1.375	8.875	11.975
\$40 per ton.....	7.35	8.35	3.10	7.50	1.375	8.875	11.975
\$50 per ton.....	7.60	8.60	3.10	7.50	1.375	8.875	11.975
\$60 per ton.....	7.85	8.85	3.40	7.50	2.00	9.50	12.90
\$70 per ton.....	8.10	9.10	3.80	7.50	2.00	9.50	13.30
\$80 per ton.....	8.35	9.35	4.10	7.50	2.00	9.50	13.60
\$90 per ton.....	8.60	9.60	4.40	7.50	2.00	9.50	13.90
\$100 per ton.....	8.85	9.85	4.70	7.50	2.00	9.50	14.20
\$110 per ton.....	9.10	10.10	5.00	13.80	3.375	17.175	22.175
\$120 per ton.....	9.35	10.35	5.00	13.80	3.375	17.175	22.175
\$130 per ton.....	9.60	10.60	5.00	13.80	3.375	17.175	22.175
\$150 per ton.....	10.35	11.35	5.00	13.80	3.375	17.175	22.175

¹ Increased under our decision of July 29, 1920, but reduced to former basis effective Dec. 24, 1920.

² Minimum weight, 50,000 pounds; increases permitted in decision of July 29, 1920, are included.

³ The increases permitted in our decision of July 29, 1920, are included.

Complainant is here contending for the establishment of joint rates to Wabuska which shall bear some relation to those to Garfield from the standpoint of distance. The Southern Pacific is agreeable to the establishment of such rates, but the Western Pacific opposes it, chiefly because it desires to retain to itself the long haul on the traffic which originates on its lines and the lines of its connection, the Indian Valley.

The record indicates that the copper-mining industry in western Nevada and eastern-central California is at a standstill as a result of decreases in prices of copper following the war, high costs of production, and general business depression. The Wabuska smelter has not been operated since March 1, 1919, and at the time of the submission of this case practically none of the copper mines in that territory were shipping ores or concentrates, with the exception of the Engels mine. Complainant claims that access to Plumas county products will enable it to resume operations with great attendant benefit to the mining industry of that entire territory. The smelter at Wabuska is the only one in western Nevada, and the only one in the state proposing to do a general business for the public. Apparently the resumption of operation would have a stimulating effect upon the industry in the territory tributary to Wabuska besides resulting in considerable incidental traffic for the carriers, principally the Southern Pacific. But before complainant can adequately serve this territory, reverberatory furnaces must be added to the present equipment. It appears from the record that without additional tonnage such as complainant expects to obtain from Plumas county, the ores and concentrates now available to it are insufficient to insure continuous operation and justify the additional investment.

The transportation characteristics of the haul to Utah smelting points, other than distance, are more favorable than those of either of the routes to Wabuska. To Utah the traffic moves in through

trains over the main line of the Western Pacific for distances exceeding 600 miles in the direction of the ultimate destination of the smelted product, the eastern refineries. The grades on this line do not exceed 1 per cent and are compensated for curvature. Traffic density is much greater than over the branch line to Reno. Traffic moving to Wabuska via either Reno or Flanigan would require two separate train movements on the Western Pacific, and at least two on the Southern Pacific. The 40-mile haul from Hazen to Wabuska would be out of line as regards movement of smelted copper to the refineries. The ruling grades on the Reno branch are 1.4 per cent for southbound and 2 per cent for northbound traffic, and are not compensated for curvature, which is relatively greater than on the main line. The same motive power that hauls 45 loaded cars over the main line would have a capacity of but 20 loads on the Reno branch. The grades and curvature over the Fernley-Lassen branch are apparently easier. The balance of tonnage on the main line of the Western Pacific is westbound and that on the Reno branch southbound, so that the diversion to Wabuska of tonnage now going to Utah would but tend to emphasize this condition. No traffic of importance originates near Wabuska destined for Plumas county points, and a movement of ore or concentrates to Wabuska would involve a return-empty car movement. If the establishment of joint rates as prayed should result in the diversion to Wabuska of the present traffic now going to Utah points, the Western Pacific would probably lose in addition thereto a certain amount of incidental traffic from the Utah smelters, owing to the practice of the smelters of apportioning outbound traffic in proportion to inbound tonnage. The effect upon the Western Pacific of the possible diversion of this traffic should be given consideration; nevertheless its desire to retain the traffic to its own lines should not be permitted to outweigh the public interest if the establishment of joint rates is shown to be necessary or desirable therein. *Hughes Creek Coal Co. v. K. & M. Ry. Co.*, 29 I. C. C., 671.

There is no absolute assurance that a movement of ore or concentrates to Wabuska would follow the establishment of any rate which could reasonably be prescribed. The concentrates from the Walker mine will probably continue to move to the smelter at International because of financial connection between the two. The Utah smelters can afford to treat the ores and concentrates at a less charge than can complainant because of their greater proximity to the coal fields of Utah. Complainant states that it will, upon the establishment of rates suggested or considered reasonable by it, begin immediate construction of the reverberatory furnaces, but the record does not show on what rates from Plumas county complainant can afford to operate. Eight to twelve months would be necessary to complete their

construction. The Western Pacific called attention to the absence of any testimony on the part of prospective shippers of Plumas county favoring joint rates to Wabuska. The record indicates that there are mining operations in Plumas county other than the Engels and Walker mines, which have produced ore and which in all probability will produce both ore and concentrates. But aside from this consideration the public interest at the point of delivery is to be considered as well as that at the point of origin. See *Texas & P. Ry. Co. v. Interstate Commerce Commission*, 162 U. S., 197, 220, where section 3 of the interstate commerce act was under consideration.

We can not make rates solely with regard to the resultant ability of a shipper to meet commercial competition, but complainant is clearly entitled to have access to the Plumas county points at reasonable rates. Any cause for complaint of alleged undue prejudice against Wabuska and undue preference of Garfield would doubtless be removed if reasonable joint rates should be established to Wabuska, in the fixation of which proper consideration should be given, among other matters, to the Garfield rate and the circumstances surrounding it.

At the hearing on July 26, 1920, complainant proposed a scale of rates from Paxton to Wabuska ranging from \$2.10 to \$6 on ore and concentrates of values from \$20 to \$300 per ton. The rate suggested on \$100 ore was \$3.65. This scale of rates was based upon a tariff study of a large number of rates on ore and concentrates between points in Washington, Oregon, California, Montana, Idaho, Nevada, Utah, Arizona, and New Mexico, for distances varying from 68 to 981 miles. The ton-mile earning under each rate was computed, and the average for the group chosen was determined. The group averages of some 20 groups were then averaged to obtain a general average ton-mile revenue for each of the several values of ores and concentrates. These general averages were then multiplied by the distance in miles from Paxton to Wabuska to obtain the rates proposed. The average distance of all the rates used in arriving at the proposed scale is in excess of 387 miles. No account was taken of the principle that as distance increases ton-mile earnings usually decrease. It is therefore apparent that the proposed scale is lower than a comparison of the rates shown would suggest.

During the year 1919, at the instance of complainant, the establishment of joint rates on ores and concentrates from Paxton to Wabuska came before the San Francisco District Freight Traffic Committee of the United States Railroad Administration. After consideration that committee recommended a scale of rates beginning at \$2.20 for ores of a value of \$20 or less per ton, and increasing 30 cents for each \$10 increase in value up to \$100. This resulted in a rate of \$4.60 per net ton on ore of the latter value. The period

of federal control was then near an end and the United States Railroad Administration conditioned approval of the \$4.60 rate upon complainant's getting the concentrates of the Engels company, whose contract with the Garfield smelter was soon to expire. In this complainant was unsuccessful, apparently because of its higher treatment charges. Complainant's general manager testified that had the \$4.60 rate been established at that time complainant would have proceeded with the construction of the reverberatory furnaces. The Southern Pacific opposes the scale proposed by complainant, but favors the establishment of the \$4.60 scale, which it contends should be given the 25 per cent general increase authorized July 29, 1920. The Western Pacific opposed and now objects to the prescription of the \$4.60 scale on the ground that it is lower than a reasonable rate. It suggests that the acquiescence of the Southern Pacific is merely because it would enjoy some incidental traffic should there be any considerable movement of ore and concentrates from Plumas county points to Wabuska. If joint rates are to be prescribed the Western Pacific insists that a scale be adopted whereunder the rate on ore or concentrates of \$100 value shall not be less than \$6, the rates for the lower values to be based on a spread of 30 cents for each \$10 of value. This scale is based upon a consideration of averages of the rates cited by the several parties which did not apply for distances greatly in excess of that from Paxton to Wabuska.

The following table shows representative rates on ore and concentrates for distances from 160 to 200 miles, taken from the exhibits of record. They were in effect prior to August 26, 1920.

From—	To—	Routing.	Distance.	Rates based on ton value.		
				Value \$20.	Value \$50.	Value \$100.
			<i>Miles.</i>			
Tecoma, Nev.....	Garfield, Utah....	S. P., O. S. L., and L. A. & S. L.	165	\$2.80	\$4.10	\$5.00
Montella, Nev.....	do.....	do.....	172	3.10	4.70	5.60
Cobre, Nev.....	do.....	do.....	189	3.80	5.50	6.60
Bovine, Utah.....	do.....	do.....	189	2.80	4.10	5.00
Canby, Oreg.....	Tacoma, Wash.....	S. P. and O-W. R. R. & N.	171	2.50	3.40	5.00
Goldfield, Nev.....	Wabuska, Nev.....	T. & G. and S. P.	188	-----	4.30	6.10
Congress Junction, Ariz.	Sasco, Ariz.....	A. T. & S. F., A. E., and S. P.	167	3.10	4.10	5.60
Angels, Calif.....	Selby, Calif.....	Sierra Ry. and S. P.	166	3.30	3.80	5.90
Likely, Calif.....	Reno, Nev.....	N-C-O. and W. P.	161	-----	2.80	4.20
Alturas, Calif.....	do.....	do.....	180	-----	3.10	4.70
Madelaine, Calif.....	do.....	N-C-O. and S. P.	176	-----	2.50	3.80
Silver Lake, Calif.....	Needles, Calif.....	T. & T. and A. T. & S. F.	164	2.40	4.10	8.00
Valjean, Calif.....	do.....	do.....	180	2.60	4.10	8.00
Wellton, Ariz.....	Sasco, Ariz.....	S. P. and A. S.	189	2.50	3.40	4.70
Sentinel, Ariz.....	Hayden, Ariz.....	S. P. and A. & E.	186	1.90	2.80	4.10
Ochoa, Ariz.....	Miami, Ariz.....	do.....	185	2.50	3.40	4.70
Christmas, Ariz.....	Sasco, Ariz.....	S. P. and A. S.	184	2.50	3.40	4.70
Duncan, Ariz.....	El Paso, Tex.....	A. & N. M. and S. P.	184	2.20	3.10	4.40
Total.....			3,176	38.00	59.00	96.10
Average.....			176	2.71	3.28	5.34

Most of the rates shown in the above table are to smelting points, but there was little evidence introduced relative to the movement on such rates or to the operating conditions over the respective routes. They are, however, quite widely scattered over the mountain-Pacific group.

Though the rates to Garfield from Plumas county points were increased on June 25, 1918, and August 26, 1920, so as to reflect the general increases effective on those dates, they were reduced subsequent to each increase. As a result the present rates are only slightly in excess of those in effect prior to June 25, 1918. In *Nevada Rates, Fares, and Charges*, 60 I. C. C., 623, 634, it appeared that the carriers respondent had not in all instances increased their interstate rates on August 26, 1920, as permitted in our decision of July 29, 1920, and we there held that the intrastate rates on ore which were not similarly permitted by the state authorities to be increased were not shown to be unduly prejudicial or unjustly discriminatory.

The rates to Garfield from Engels, for each of the several values of ore, are \$1 greater than those from Paxton. A like arbitrary over Paxton in rates to Wabuska appears to be proper from Engels.

Upon all the facts of record we are of opinion and find that it is desirable in the public interest that the defendants, according as they participate in the transportation, should establish joint rates on ore and concentrates, in carloads, minimum weight 40,000 pounds, from Paxton and Engels to Wabuska, and that the existing rates for such transportation are, and for the future will be, unreasonable to the extent that they exceed or may exceed those shown in the following scale in which values and rates are stated per ton of 2,000 pounds:

From—	Ore and concentrates, carloads, minimum weight 40,000 pounds, value declared in writing by the shipper or agreed upon in writing as the released value not exceeding—												
	\$20	\$30	\$40	\$50	\$60	\$70	\$80	\$90	\$100	\$110	\$120	\$130	\$150
Paxton	\$2. 90	\$3. 20	\$3. 50	\$3. 80	\$4. 10	\$4. 40	\$4. 70	\$5. 00	\$5. 30	\$5. 60	\$5. 90	\$6. 20	\$6. 80
Engels	3. 90	4. 20	4. 50	4. 80	5. 10	5. 40	5. 70	6. 00	6. 30	6. 60	6. 90	7. 20	7. 80

The foregoing rates and values shall be subject to revision in accordance with value determined by the smelter and certified to the carrier. The usual form of certificate of declaration or agreement as to value should be provided. As the above scale includes values not provided for by all the factors of the rates under attack, an appropriate released-rates order will be made a part of the order attached to this report.

No. 11608.

PIONEER LUMBER COMPANY ET AL.

v.

DIRECTOR GENERAL, AS AGENT, CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, ET AL.

Submitted July 16, 1921. Decided November 3, 1921.

1. Rates on lumber and lumber products, in carloads, from points in Idaho, Montana, and Washington to Ucross and Buffalo, Wyo., found not unreasonable but unduly prejudicial. Nonprejudicial rates prescribed. Reparation denied.
2. Rates on brick, in carloads, from Sheridan, Wyo., to Buffalo, during federal control, found not unreasonable or otherwise unlawful.

J. B. Campbell, Frank Lyon, and R. S. Brown for complainants.
F. G. Dorety and R. J. Hagman for all defendants except Wyoming Railway; *Burt Griggs and Alden, Latham & Young* for Wyoming Railway.

REPORT OF THE COMMISSION.

DIVISION 4, COMMISSIONERS MEYER, DANIELS, AND ESCH.

BY DIVISION 4:

Exceptions were filed by complainants and defendants to the report proposed by the examiner, and the case was orally argued before us.

Complainants, the Pioneer Lumber Company and the Buffalo Lumber Company, are corporations engaged in the lumber and fuel business at Buffalo, Wyo. By complaint filed July 7, 1920, they allege that the rates charged since June 25, 1918, on interstate carload shipments of lumber and lumber products from points in Idaho, Montana, and Washington, to Buffalo and Ucross, Wyo., and on intrastate shipments of brick, in carloads, from Sheridan, Wyo., to Buffalo were unreasonable, unjustly discriminatory, and unduly prejudicial. The prayer is for reparation and the establishment of interstate rates on lumber for the future. No evidence was offered in support of the allegation of unjust discrimination. Rates will be stated in amounts per 100 pounds.

Buffalo, with a population of 1,800, is the terminus of the Wyoming Railway, 28.6 miles southwest of Clearmont, Wyo., the junc-

tion with the Chicago, Burlington & Quincy, hereinafter called the Burlington. Ucross, with a population of about 100, is also on the Wyoming 10 miles southwest of Clearmont. The Wyoming was organized in 1910, but construction was not completed until 1918.

The shipments moved over defendants' lines and apparently the applicable rates were collected upon the Clearmont combination. On shipments moving during federal control complainants seek reparation to the basis of the rates which would have been applicable if the increases provided in general order No. 28 of the Director General of Railroads had been applied to the total combinations instead of to the separate components. On subsequent shipments the reparation claimed is based upon the rates contemporaneously in effect to Clearmont.

The rates on lumber and lumber products in the northwest have, for many years, been blanketed both as to points of origin and destination. In the so-called *Northwest Lumber Cases*, 14 I. C. C., 1, 23, 41, 51, decided June 2, 1908, we prescribed reasonable rates to Clearmont which is embraced in the so-called blanket territory. The components to Clearmont on lumber and lumber products here in issue are the rates thus prescribed increased under the general increases of 1918 and 1920.

General order No. 28 provided that rates on lumber and lumber products should be increased 25 per cent, maximum 5 cents, and that rates on brick should receive a flat increase of 2 cents. By applying these increases to each factor instead of to the through combinations an additional charge of 4 cents to Buffalo and 2 cents to Ucross on lumber and lumber products and of 2 cents on brick to Buffalo resulted. Complainants contend that the Director General never intended that the increases should be applied to each factor, and that this is shown by his freight rate authority No. 10 of July 2, 1918, which directed, among other things, that the tariffs be revised so that the increases in general order No. 28 would be applicable to the total rates. The Wyoming increased its rates under general order No. 28 and the record shows that on June 29, 1918, it was released from federal control. Its rates were not changed in accordance with freight rate authority No. 10. With respect to the rates on brick complainants rely solely upon the fact that each factor of the combination was increased under general order No. 28. The reasonableness of these rates can not be determined solely from the method of their construction. Defendants show that the assailed rates on brick compare favorably with other similar rates in this general territory.

On June 25, 1918, the rate on lumber from the coast group to Clearmont was 45 cents and from the Spokane group 38 cents. From Clearmont to Buffalo the rate was 20 cents, making combination rates

of 65 and 58 cents, respectively. The present coast-group rate is 81.5 cents and the present Spokane rate is 72.5 cents. The factors up to Clearmont are 56.5 and 47.5 cents, respectively. Complainants submitted exhibits which showed the ton-mile and car-mile earnings on shipments of lumber. These earnings were compared with earnings that would have accrued if the shipments had moved to other destinations in the blanket territory which took the same rates as Clearmont. For example, a shipment of fir lumber from National, Wash., to Buffalo, 1,270 miles, earned 10.2 mills per ton-mile and under the present rates it would earn 12.8 mills. If this shipment had moved to Spearfish, S. Dak., 1,556 miles, it would have produced 5.7 mills per ton-mile and would now produce 7.2 mills. The rates to Birds, Colo., 1,676 miles, on this shipment would have yielded 5.3 mills and 6.7 mills, respectively. The factor up to Clearmont on this shipment yielded 7.2 mills and the factor from Clearmont to Buffalo, 14.03 cents per ton-mile. The present 81.5-cent rate from Everett, Wash., to Buffalo, 1,128 miles, based on a load of 63,760 pounds, the average load of fir lumber as given in *Increased Rates, 1920*, 58 I. C. C., 220, by the West Coast Lumbermen's Association, yields car-mile earnings of 46.06 cents, while the present Everett-Clearmont rate of 56.5 cents produces car-mile earnings of 32.77 cents. If the Clearmont rate were extended to Buffalo, the car-mile earnings would be 31.93 cents. The rate from Everett to Birds yields car-mile revenue of 21.45 cents.

Defendants maintain that these comparisons are of little value because blanket rates are compared with blanket rates and the specific earnings vary with the distances used. They contend that the average point of origin and the average point of destination in the respective blankets should be considered, and that as the factors up to Clearmont were prescribed by us in 1908, and subsequently increased under general order No. 28 and the general increases of 1920, they are in and of themselves reasonable.

It appears that the Wyoming incurred in 1918 an operating deficit of \$46,408.72 and \$24,917.89 in 1919; no interest has been paid on its bonds for nearly three years; no dividends have ever been paid on its stock; its officers and directors have received no salaries. Its line is only 28.6 miles in length and Buffalo is nearly 1,000 feet higher than Clearmont. The road is operated through a sparsely settled country with no present prospect of increased traffic.

The above facts point to the conclusion that neither the combination rates nor the components thereof were or are unreasonable *per se*. The question remains as to whether the rates resulted in undue prejudice.

The Pioneer Lumber Company has lumber yards at Sheridan, 38 miles north of Buffalo by dirt road, and at Ucross as well as at Buffalo, while the Buffalo Lumber Company has yards at Buffalo and at Kaycee, Wyo., about 60 miles south of Buffalo. The testimony shows that farmers within 8 miles north of Buffalo generally buy their lumber in Buffalo, but those farther north buy at Sheridan. There is a divide known as Tunnel Hill about midway between Sheridan and Buffalo, and save for the more favorable freight rates to Sheridan the record indicates that Buffalo would probably receive the business of those who live south of the divide. Ulm, Wyo., is on the Burlington just west of Clearmont. Competitors of the Pioneer Lumber Company located at Ulm and Clearmont are enabled by reason of their lower rates to secure trade which otherwise might go to Ucross. Casper, Wyo., is on the Big Horn division of the Burlington about 135 miles south of Buffalo and 75 miles south of Kaycee, and takes the blanket rate. The Buffalo Lumber Company's yard at Kaycee is not served by railroad, and is approximately halfway, across country, between Buffalo and Casper. This complainant hauls its lumber from Buffalo to Kaycee by truck. Just prior to the hearing oil was discovered about 10 miles south of Kaycee, and the Buffalo Lumber Company insists that the blanket rate should be extended to Buffalo in order that it may use its yards at that point and haul lumber to Kaycee so that it may be able to compete in the oil field with its Casper competitors.

Spearfish and Deadwood, S. Dak., are located on the branch line of the Burlington that connects with the main line at Edgemont, S. Dak. Edgemont is 124.4 miles distant from Clearmont, and Spearfish and Deadwood are 130 and 107 miles distant, respectively, from Edgemont. Both Spearfish and Deadwood have the blanket rates. Birds, Colo., about 400 miles beyond Clearmont, and located upon the Great Western, an independent line 82 miles long, takes the blanket rates. Complainants contend that the fact that the defendants voluntarily apply the blanket rates to these points, and the further fact that defendants willingly maintain the extensive blanket, while refusing to extend blanket rates to points on the Wyoming result in undue prejudice.

Defendants state that they extend blanket rates to points on independent short lines only when compelled to do so by competition. The Burlington extends the blanket rate from a point about 70 miles south of Billings, Mont., for a distance of about 600 miles through Alliance, Nebr., to Denver, Colo. This blanket was originally established to meet competition on lumber from California via the Harriman lines. At that time the Big Horn division of the Burlington

had not been completed and to compete with the Union Pacific at Denver, the Burlington had to haul lumber received from the Great Northern and the Northern Pacific via its Sheridan route through Alliance. If the former rate had not been blanketed, fourth section violations would have been created along the Sheridan line. This would not account for the Burlington's extending the blanket to Spearfish, an additional haul from Edgemont of 130 miles. Competitive reasons compelled the extension of the blanket rates to Birds. The Great Western has two connections with the Union Pacific, one at Eaton, Colo., and one at Kelim, Colo.; two connections with the Colorado & Southern, one at Loveland, Colo., and one at Windsor, Colo., besides the connection with the Burlington at Longmont, Colo. Defendants contend that this competition distinguishes the situations at Birds and at Buffalo. But there is no such carrier competition at local main-line and branch-line stations on the Burlington in this blanketed territory.

Since the trunk line carrier publishes the same blanket rate on lumber in carloads to destinations located over a considerable stretch of its main line and also extends that rate to points located on its branch lines a shipper situated on an independent branch line connecting with this blanketed stretch of the main line is entitled to the blanket rate, especially where the service over the independent branch line is not in excess of the average service over the trunk line's own branches. It may be cheaper to perform a given service for equal distances to points located on a trunk line or on its branch lines than to points on an independent line. It is not cheaper for the Burlington to perform the service from Edgemont to Spearfish than for the Wyoming Company to perform the service from Clearmont to Buffalo. The mileage from Edgemont to Spearfish is over 4.5 times greater than that to Buffalo. Buffalo and Ucross are entitled to the blanket rates.

The question of divisions, and whether or not the Wyoming should receive its full local or only part thereof out of the blanket rate is not here in issue.

There is no competition between retail lumber dealers situated at considerable distances apart in this extensive blanketed territory. The inhibition of section 3 of the interstate commerce act against undue prejudice applies to localities as well as to shippers at those localities. As was said in *Intermediate Rate Asso. v. Director General*, 61 I. C. C., 226, at page 233, respecting competition between localities:

Thriving communities, all in the same general section of the country, striving for population, industry and business growth, may not need elaborate evidence to show that they are entitled to relief if the rates are not properly related.

We find that the interstate rates assailed on lumber and lumber products were not and are not unreasonable; that during the period of federal control the intrastate rates on brick here in issue were not unreasonable, or otherwise unlawful; but that the failure of defendants to extend the blanket rates on lumber to Buffalo and Ucross on the line of the Wyoming Railway, while at the same time maintaining the blanket rates to other more distant points in the blanket territory on defendants' main and branch lines or on independent connecting lines, is and for the future will be unduly prejudicial. Complainants have not shown that they were damaged by any undue prejudice which may have existed in the past. Reparation is therefore denied.

An appropriate order will be entered.

64 I. C. C.

No. 12191.

ST. TAMMANY ICE & MANUFACTURING COMPANY,
LIMITED,

v.

DIRECTOR GENERAL, AS AGENT.

Submitted July 20, 1921. Decided October 31, 1921.

Charges on fuel oil, in tank-car loads, from Destrehan, La., to Covington, La.,
found not unreasonable or unduly prejudicial. Complaint dismissed.

W. M. Barrow for complainant.*A. P. Humburg* for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation, alleges by complaint filed February 5, 1921, that the rate and estimated weight applied on 45 tank-car loads of fuel oil shipped from Destrehan, La., to Covington, La., between June 6, 1919, and February 5, 1920, were unreasonable, unjustly discriminatory, unduly prejudicial, and in violation of section 4 of the interstate commerce act. The prayer is for reparation only. Rates will be stated in cents per 100 pounds.

Destrehan is a local point on the Yazoo & Mississippi Valley, hereinafter called the Y. & M. V., approximately 18 miles west of New Orleans, La. From Destrehan to Covington three routes are available: One over the Y. & M. V. to New Orleans and the New Orleans Great Northern to destination, about 84 miles; another over the Y. & M. V. to Orleans Junction, La., or to New Orleans, thence over the Illinois Central to Hammond, La., and the Y. & M. V. beyond, about the same distance; and the third over the Y. & M. V. direct through Baton Rouge, La., 138 miles.

The shipments apparently were unrouted and moved over the latter route. Based on the applicable distance rate of 13.5 cents and an estimated weight of 7.4 pounds per gallon, charges of \$4,454.83 were collected on a total weight of 3,299,623 pounds. The rate charged was prescribed by the Railroad Commission of Louisiana for single-line hauls over 125 and not over 150 miles plus the increase of 4.5 cents authorized by freight rate authority No. 96 of the Di-

rector General of Railroads. Over the two-line routes the rates were somewhat higher.

Complainant's allegations of unlawfulness rest on the following grounds: (1) That when the shipments moved there was in effect a rate to Covington of 11.5 cents, subject to an estimated weight of 6.6 pounds per gallon, from New Orleans, Meraux, Baton Rouge, and North Baton Rouge, La., as well as from a number of points in the territory south of Baton Rouge; (2) that application for the establishment of this rate from Destrehan was made by the shipper in September, 1919, and it was in fact established on February 29, 1920; and (3) that the rates from Baton Rouge and New Orleans, being unrestricted as to routing, were applicable on shipments from either of those points when routed through Destrehan to Covington, thus violating the principles of the long-and-short-haul provision of the fourth section of the act, and of the laws of the state of Louisiana.

From Baton Rouge to Covington over the Y. & M. V. is 67 miles, and from New Orleans to Covington over the New Orleans Great Northern, 66 miles. Defendant urges that the rates from Baton Rouge and New Orleans were never intended to apply through Destrehan as this would be an unusual and unduly circuitous route; that probably no shipments have ever moved that way and that as a practical matter the principles of the fourth section were not contravened. The rate of 11.5 cents in effect from New Orleans and Baton Rouge was, as stated, unrestricted in its application and would have applied on shipments moving by way of Destrehan.

Defendant submitted an exhibit comparing the rate charged with rates on fuel oil in southern and southwestern territory for distances ranging from 12 to 162 miles, the lowest rate shown being 14.5 cents. His witness testified that the 11.5-cent rate from New Orleans was originally based on the Louisiana commission's scale for 60 miles, although the actual short-line distance to-day is 66 miles. Under the same scale the rate for 66 miles would be 12 cents. The difference in the distances is possibly due to track changes since the rate was first published. The rates from Meraux, Baton Rouge, and other points in that vicinity were established, it is said, solely to enable refineries at those points to compete with New Orleans.

No satisfactory evidence was introduced as to the propriety of either 7.4 or 6.6 pounds as an estimated weight per gallon. Western classification provides the former as the estimated weight on crude and fuel oil, while in southern and official classifications the latter obtains.

We find that the charges collected were not unreasonable or unduly prejudicial. The complaint will be dismissed.

No. 12123.

OHIO RATES, FARES, AND CHARGES.

IN THE MATTER OF RATES, FARES, AND CHARGES OF
THE PENNSYLVANIA-OHIO POWER & LIGHT COM-
PANY WITHIN THE STATES OF OHIO AND PENNSYL-
VANIA.

Submitted May 5, 1921. Decided November 7, 1921.

Certain intrastate passenger fares maintained by petitioner in Ohio found to be unduly preferential of intrastate passengers, unduly prejudicial to interstate passengers, and unjustly discriminatory against interstate commerce. Fares prescribed which will remove such preference, prejudice, and discrimination.

Douglass D. Storey and Hause, Evans & Baker for petitioner.

John J. Boyle for village of Hubbard, Ohio.

J. H. Leighninger for city of Youngstown, Ohio.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

This proceeding was instituted by us upon petition filed on behalf of the Pennsylvania-Ohio Power & Light Company, hereinafter referred to as the petitioner, which operates an electric line approximately 14.5 miles in length between the cities of Youngstown, Ohio, and Sharon, Pa., passing through the village of Hubbard, Ohio. The maximum distances from Youngstown and Sharon to Hubbard are 8.75 miles and 7.18 miles, respectively. The petition alleges that by reason of a franchise contract with the village of Hubbard, made in 1901 by its predecessor, the petitioner is unable to increase its passenger fares between Hubbard and Youngstown to the basis of its fares between Hubbard and Sharon, resulting in undue and unreasonable preference and advantage to persons traveling between Youngstown and Hubbard, and in undue prejudice and disadvantage to other persons traveling interstate between Sharon and Hubbard and to the city of Sharon, and also in unjust and unreasonable discrimination against interstate commerce. It is further alleged that petitioner's inability to increase its intrastate fares to a reasonable basis deprives it of sufficient revenue to pay its operating expenses and the cost of maintaining its property devoted to said service.

In 1917, the Youngstown-Sharon Street Railway Company, the original corporation owning the Youngstown-Sharon line, was merged with four other Ohio corporations and one Pennsylvania corporation under the name of the Mahoning & Shenango Railway & Light Company. This name was subsequently, in 1920, changed to the Pennsylvania-Ohio Electric Company. Later it became necessary to eliminate smaller portions of the railway operations, and on November 1, 1920, a new corporation, the Pennsylvania-Ohio Power & Light Company, the petitioner herein, was formed to take over the Youngstown-Sharon line. The entire common stock of the petitioner is owned by the Pennsylvania-Ohio Electric Company, but its bonds and notes are held by the public, as is also its preferred stock. The line acquired by the petitioner extends only to the Ohio-Pennsylvania state line, and the company operates into Sharon over the tracks of the Shenango Valley Traction Company. The petitioner acquired no power plant, but purchases power from the Ohio-Pennsylvania Electric Company on the basis of actual cost to generate.

Petitioner maintains a regular interurban passenger service every half hour between Youngstown and Sharon. It also maintains additional separate services between Hubbard and Youngstown and Hubbard and Sharon. Petitioner is also engaged in the transportation of freight, as will be later explained. Passenger fares only are involved.

A franchise ordinance passed by the village of Hubbard in 1901, and accepted by the Youngstown & Sharon Railway, one of the predecessors of petitioner, provided for the maintenance between Hubbard and Sharon of a cash fare of 13 cents, and between Hubbard and Youngstown of a cash fare of 12 cents. Between Hubbard and both cities the franchise required the maintenance of round-trip tickets at the rate of 20 cents, special tickets good for 22 rides for \$2, and 54-trip commutation tickets for \$3.80. These fares are still in effect on intrastate travel between Hubbard and Youngstown, and yield, in the order named, 1.37, 1.14, 1.04, and 0.81 cents per mile. Effective February 15, 1920, the Mahoning & Shenango Railway & Light Company, then operating the petitioner's line, by its tariff duly filed with this Commission, increased its one-way fare between Hubbard and Sharon to 20 cents, the price of a 54-trip commutation ticket to \$5, and canceled the round-trip and special tickets between those points. Subsequently the Pennsylvania-Ohio Electric Company, successor to the Mahoning & Shenango Railway & Light Company, filed with this Commission its tariff I. C. C. No. 4, in which it proposed to establish the same fares between Hubbard and Youngstown as those in effect between Hubbard and Sharon, above enu-

merated, and also to establish between Youngstown and Hubbard an 8-trip ticket for \$1. It was also proposed to increase the one-way fare between Sharon and Youngstown from 30 to 35 cents, yielding 2.41 cents per mile, and the 54-trip commutation ticket between those points from \$9 to \$10, or to a basis of 1.27 cents per mile. This tariff became effective on interstate travel October 1, 1920, and was adopted by the petitioner, the successor to Pennsylvania-Ohio Electric Company, on November 25, 1920. A tariff carrying the same fares was rejected by the Public Utilities Commission of Ohio in so far as it attempted an increase in the fares between Hubbard and Youngstown on the ground that it was without jurisdiction to allow the establishment of rates and charges in excess of those prescribed by the franchise contract. Refusals of the Public Utilities Commission of Ohio to allow increases in fares in similar cases have been sustained by the supreme court of Ohio. The petitioner shows that prior to filing this petition it and its predecessors exhausted all means through negotiation with the village of Hubbard and otherwise to obtain relief from the franchise fares between Hubbard and Youngstown, but without avail.

The fare applicable to local traffic within the corporate limits of the village of Hubbard is 5 cents and within the corporate limits of Youngstown 9 cents. Petitioner does not seek an increase in these fares. However, under the Hubbard franchise petitioner is also required to maintain the 5-cent fare between any point within the village and any point not exceeding 1.5 miles beyond the limits of the village in either direction. It developed at the hearing that petitioner seeks to limit the 5-cent fare to points within the village of Hubbard. It was also developed at the hearing that under an ordinance of the county commissioners of Mahoning county, Ohio, petitioner is also required to maintain a 5-cent fare between Youngstown and the Mahoning-Trumbull county line, which is 5.40 miles from petitioner's terminal in Youngstown. It desires to increase this fare to 10 cents. The petition on which the order of investigation herein is based, the evidence taken, and briefs filed all relate largely to the intrastate fares between Hubbard and Youngstown as compared with the interstate fares between Hubbard and Sharon. As the petition disclosed no complaint against the fare between Youngstown and the county line referred to the authorities of Mahoning county were not served with a copy of our order of investigation herein.

The fares proposed by petitioner between Hubbard and Youngstown—20 cents one way, 8 tickets for \$1, and 54-trip commutation ticket for \$5—yield revenue, per passenger-mile, in the order named, of 2.29 cents, 1.43 cents, and 1.06 cents.

Evidence was submitted showing that industries, mercantile establishments, and amusement houses in Sharon compete with those in Youngstown; that residents of Hubbard are employed at each place who travel daily back and forth over petitioner's line; also that many of Hubbard's residents likewise travel to one or the other of these points to purchase goods or for other purposes; and that in this transportation Sharon and its patrons are discriminated against by reason of the lower intrastate fares between Hubbard and Youngstown. The mayor of Sharon testified that there are workmen living in Hubbard who are employed at Sharon.

There are many ways in which a passenger may defeat the through fare between Sharon and Youngstown. By paying the combination fare to and from Hubbard the through fare is defeated by 3 cents; by paying the 20-cent fare to Hubbard and using a portion of a round-trip ticket between Hubbard and Youngstown which is good in either direction, the through fare is defeated by either 5 or 6 cents according to the price paid for round-trip ticket. Other combinations lower than the through fare can be made by using commutation tickets between Hubbard and Youngstown. While the petitioner's tariff contains a provision against fare splitting the impossibility of enforcing it is asserted.

The following table taken from exhibits of record gives a summary of passenger revenue and operating expenses for the year 1920, and, based on the traffic during January, 1921, estimates of what the result of operation will be for the entire year 1921, under the present fares, and what it would be under the proposed fares. The figures submitted do not include any reserve for depreciation, renewals, or for interest on funded and unfunded debt. With the exception of a few items directly related to freight traffic, which were omitted, all of the operating expenses were charged to passenger traffic.

	Actual for 1920.	Estimate for 1921 (present fares).	Estimate for 1921 (proposed fares).
Revenue.....	\$332, 173. 43	\$367, 529. 22	\$417, 127. 00
Operating expenses:			
Way and structures.....	48, 164. 07	65, 500. 00	65, 500. 00
Equipment.....	67, 544. 52	63, 600. 00	63, 600. 00
Power.....	46, 327. 22	37, 600. 00	37, 600. 00
Transportation.....	107, 005. 25	129, 400. 00	129, 400. 00
Traffic.....	595. 55	1, 200. 00	1, 200. 00
General and miscellaneous.....	52, 129. 58	54, 000. 00	54, 000. 00
Taxes.....	23, 309. 36	23, 779. 07	24, 491. 94
Total expenses and taxes.....	345, 075. 55	375, 079. 07	375, 791. 94
Balance.....	12, 902. 12	17, 549. 85	41, 335. 06

¹ Deficit.

It will be noted that the estimated cost of power in 1921 is substantially lower than the 1920 cost. This is due to the fact that the power is purchased at the switchboard cost and a reduction in the cost of coal is estimated. Power cost in 1920 was 1.42 cents per kilowatt hour and the 1921 estimate is 1 cent.

It is shown that in 1920 the operations between Hubbard and Youngstown were conducted at a loss of \$31,264.06, as compared with a profit of \$18,361.94 between Hubbard and Sharon. The petitioner estimates that in 1921 it will transport 1,897,890 intrastate and 1,180,607 interstate passengers, and that at the present fares the intrastate passenger traffic will yield \$162,721 as against \$204,808 from the interstate passenger traffic. In other words, intrastate traffic, constituting 61.7 per cent of the total traffic, will yield but 44.5 per cent of the total revenue, resulting in a deficit for the entire operation of \$7,549.85, as shown above. It estimates that under the proposed fares the Youngstown-Hubbard deficit would be turned into a profit of \$16,399.25.

The petitioner has connections, one direct and the other over a private siding, at Masury and at Stop 41, both east of Hubbard, with the New York Central Railroad, and while petitioner does not originate and deliver freight traffic to this line, it received from it, during the years 1919 and 1920, 922 cars of freight for delivery chiefly at points on the petitioner's line. The New York Central forms a connecting link between petitioner's line and other trunk lines. The petitioner also operates a daily less-than-carload freight service between Youngstown and Sharon, and on three days a week operates a through car between Sharon and New Castle, Pa., via Hubbard and the Sharon & New Castle Railroad. The petitioner also participates with other electric lines in through freight rates from points on its line to Cleveland and Toledo, Ohio, Detroit, Mich., and other points. In 1919, the less-than-carload freight amounted to 6,240 tons and produced a revenue of \$18,000, and the carload and switching revenue was \$6,246.52. The total, \$24,246.52, amounted to about 7 per cent of the gross earnings. In 1920 the less-than-carload tonnage was 5,474 and produced a revenue of \$21,221, and the carload and switching traffic yielded \$5,259. The total, \$26,480, was 7.4 per cent of the gross earnings of the petitioner for that year.

The petitioner submitted a valuation of its physical properties, but for the purposes of this investigation it is unnecessary to discuss it. Without consideration of returns on any value whatever, deficits are encountered.

The position of the village of Hubbard is summed up in a statement contained in its brief as follows:

To the claim made by the petitioner that the rates of fare fixed and prescribed by the terms of said franchise ordinance do not provide sufficient compensation or income to maintain proper service and afford a sufficient return on the capital invested, our answer is that this is not the concern of the Village of Hubbard, for a bargain is a bargain, and a contract duly entered into by persons competent to enter into it is binding upon all parties and cannot be modified or changed without the consent of all parties. The street railway company had an equal opportunity with the Village of Hubbard, of looking into the future and foreseeing conditions that might arise, and accepted the contract with its burdens as well as its privileges. The evidence shows that ever since the acceptance of the ordinance in 1901, this company has collected these rates of fare provided by the ordinance, while other companies in other localities were carrying passengers for a less rate of fare over a similar distance, and in justice to all they must consider the fat years with the lean ones, and in so considering a much greater period of time elapsed between 1901 and 1917, when expenses increased and earnings fell off more than from the latter date to the present time, of which the petitioner complains.

The answer to this is that if the maintenance of fares fixed by a franchise contract results in unjust discrimination against interstate commerce, it is within our power to remove it by prescribing other and different intrastate fares.

It is not shown that the present interstate fares between Hubbard and Sharon or between Sharon and Youngstown are unreasonable. On the other hand they appear to be relatively lower than fares maintained by other electric interurban railways in Ohio in the same general territory. For illustration, the fares of the Youngstown & Suburban Railway, extending from Youngstown to Leetonia, 15 miles, and of the Northern Ohio Traction & Light Company, extending from Cleveland to Urichsville, 103 miles, are on a basis of approximately 3 cents per mile.

We are of opinion and find that the interstate passenger cash and 54-ride commutation fares of the Pennsylvania-Ohio Power & Light Company between Sharon and Hubbard, also the interstate passenger fares between Sharon and Youngstown, are just and reasonable fares for interstate transportation between those points; and that the maintenance of corresponding intrastate fares between Hubbard and Youngstown lower than the just and reasonable interstate fares between Sharon and Hubbard has resulted and will result in undue prejudice to persons traveling in interstate commerce over the petitioner's line in the state of Ohio and between points in the state of Ohio and Sharon, Pa.; in undue preference and advantage to persons traveling intrastate between points in Ohio; and in unjust discrimination against interstate commerce.

We further find that, whether the aforesaid passenger fares pertain to transportation in interstate commerce or to transportation in intrastate commerce, the transportation services are performed by the petitioner under substantially similar circumstances and conditions; and that said undue prejudice and preference and unjust discrimination can and should be removed by establishing intrastate passenger cash and 54-ride commutation fares between Hubbard and Youngstown not less than the interstate passenger fares herein found reasonable between Hubbard and Sharon.

An appropriate order will be entered.

COMMISSIONERS AITCHISON, POTTER, and CAMPBELL dissent.

64 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 1361.

SWITCHING BETWEEN CONNECTING LINES AND C. &
E. I. TEAM TRACKS AT CHICAGO, ILL.

Submitted September 21, 1921. Decided November 15, 1921.

Proposed increased charge and minimum weight for switching interstate shipments, in carloads, between respondent's team tracks and junctions with connecting lines at Chicago, Ill., found justified. Order of suspension vacated and proceeding discontinued.

K. L. Richmond for respondent.

James C. Jeffery for protestant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND LEWIS.

BY DIVISION 3:

By schedules filed to take effect on July 15, 1921, the Chicago & Eastern Illinois, hereinafter referred to as respondent, proposed to increase its interstate switching charge and minimum weight on all commodities, in carloads, other than fruits and vegetables, also excepting certain competitive traffic in butter, eggs, poultry, and game, between its team tracks and junctions with connecting lines at Chicago, Ill., when from or to points beyond the Chicago switching district. Upon protest of the Chicago Board of Trade these schedules were suspended until December 12, 1921. Charges will be stated in cents per 100 pounds.

The present charge is 3 cents, minimum 45,000 pounds, except on butter, eggs, poultry, and game. Through error in reissuing its tariff on June 10, 1921, these excepted commodities are now accorded switching service without switching charge. By the schedules under suspension such switching without specific charge therefor would be restricted to shipments moved to Chicago over respondent's line and there reconsigned or reshipped from its team tracks to points east of the Indiana-Illinois state line. The proposed charge applicable on all traffic, with the exceptions noted, is 3.5 cents, minimum weight 60,000 pounds, and under it the minimum charge per car would be increased from \$13.50 to \$21.

Protestant contends that these charges would be unreasonable, and also unduly prejudicial to interstate traffic, inasmuch as no increase

is proposed in the present intrastate charge of 3 cents, minimum 45,000 pounds, applicable for like service.

The Chicago switching district comprises two territorial divisions known as the inner and the outer zones. Generally speaking, the trunk lines do not apply the Chicago basis of rates on traffic to and from the inner-zone team tracks of connecting lines or absorb the switching charges of the latter on such traffic. There are some exceptions to the general practice, but it is the policy of the trunk lines to restrict the use of their inner-zone team tracks to traffic upon which they perform the line-haul service. It is customary to apply the Chicago basis of rates, or to absorb the switching charges of the terminal road, on traffic from or to team tracks in the outer zone.

Respondent's team tracks in the outer zone and also one of them in the inner zone are owned by the Chicago & Indiana Western and are used by respondent only for its line-haul traffic. All other traffic to and from these team tracks is handled exclusively by the Chicago & Indiana Western and is subject to the regulations and charges of that carrier. Respondent has three other team tracks in the inner zone. Under the provisions of its tariff the present charge and minimum apply, and the proposed charge and minimum would apply, only on outbound shipments from these inner-zone team tracks to junctions with connecting lines, except that they do and would apply on inbound shipments to one of the team tracks under certain conditions stated in respondent's tariff. Protestant has urged no particular objections to the proposed charge and minimum except in so far as they would apply on inbound shipments of grain and grain products, hay, and straw. Considering the limitations upon their application it appears that they would affect only a negligible amount of such traffic.

The charge of 2 cents, minimum 45,000 pounds, applicable prior to the general increase authorized by us on July 29, 1920, had been in effect for many years. While the proposed charge represents a greater increase than was then authorized it appears that the former charge was lower than those generally maintained by other trunk lines in the Chicago switching district for similar service.

With a few exceptions, which apply to certain commodities, team tracks, or carriers, the present charges of the other trunk lines for switching to and from inner-zone team tracks equal or exceed the proposed charge. Somewhat lower charges are maintained by the Chicago & Indiana Western and other switching or belt lines. A minimum of 60,000 pounds is uniformly applied throughout the Chicago district on traffic switched to and from industries. There is no evidence tending to show that respondent should be required to maintain a lower charge or minimum than is applied generally

by other trunk lines in the same district for a like kind of service or that the proposed charge and minimum would be unduly prejudicial to interstate commerce.

Respondent's division of such joint rates as apply to and from its team tracks on traffic received from or delivered to connecting lines in the Chicago switching district is 3.5 cents, minimum \$10.50 per car. A witness for respondent testified that his investigation and study of switching costs in the Chicago district had shown that the cost to respondent ranges from \$14 to \$28 and averages more than \$20 per car. No supporting details of his estimates were given.

We find that the proposed increased charge and minimum weight have been justified. An order will be entered vacating our order of suspension and discontinuing the proceeding.

64 I. C. C.

No. 11609.

EDWARDS & BRADFORD LUMBER COMPANY

v.

DIRECTOR GENERAL, AS AGENT, DENVER & RIO
GRANDE RAILROAD COMPANY, ET AL.

Submitted August 4, 1921. Decided November 3, 1921.

Rate on coal from Kenilworth, Utah, to Hillyard, Wash., found not unreasonable or unjustly discriminatory but unduly prejudicial. Relationship of rates prescribed for the future. Reparation denied.

J. B. Campbell and *R. S. Brown* for complainant.

F. G. Dorety and *R. J. Hagman* for defendants.

REPORT OF THE COMMISSION.

DIVISION 4, COMMISSIONERS MEYER, DANIELS, EASTMAN, AND POTTER.

MEYER, *Commissioner*:

Exceptions were filed by complainant to the report proposed by the examiner.

Complainant is a corporation engaged in the retail lumber and fuel business with its principal office at Chicago, Ill., and a branch office at Hillyard, Wash. By complaint filed July 7, 1920, it alleges that the rates on coal, in carloads, from Kenilworth, Utah, to Hillyard were and are unreasonable, unjustly discriminatory, and unduly prejudicial. We are asked to award reparation on four carloads of coal which moved during the period from April 4, 1919, to July 26, 1919, and on subsequent shipments and to prescribe a reasonable and nonprejudicial rate for the future. Except as otherwise noted, rates are stated hereinafter in amounts per net ton, and do not include the general increases of 1920.

The shipments moved over the lines of the Denver & Rio Grande Railroad, Oregon Short Line Railroad, and Oregon-Washington Railroad & Navigation Company to Spokane, Wash., and the Great Northern Railroad from Spokane to Hillyard, and charges were collected at a rate of \$6.20, based on a commodity rate of \$4.90 to Spokane and the local class-D rate of 6.5 cents per 100 pounds beyond. The total distance from Kenilworth to Hillyard is 1,007.8 miles, and from Spokane to Hillyard 4.8 miles. The reasonableness of the factor up to Spokane is not attacked.

Prior to general order No. 28 of the Director General of Railroads there was in effect a commodity rate of \$4.40 to Spokane, and a class-D rate of 3 cents per 100 pounds beyond, making a total through rate of \$5. These factors were increased under that order to \$4.90, and 6.5 cents per 100 pounds, respectively. The latter increase was brought about by the application of the minimum class scale.

The Spokane River flows through Spokane in a westerly direction. The Great Northern maintains an industrial track in Spokane, known as the S. F. & N. track, which is located north of the river and has its western terminus on the north bank about a mile distant from the freight house on the main line south of the river. This industrial track extends easterly and northerly to a point outside the city limits of Spokane and close to the city limits of Hillyard, paralleling for a short distance the main line to Hillyard. In order to reach industries on this track, cars are hauled on the main line to a point approximately 2,000 feet from complainant's yard, where connection is made with the industrial track and the cars are then hauled back into Spokane, the haul from the connection with the Oregon-Washington Railroad & Navigation Company being approximately 9 miles. To avoid the roundabout switching service it would be necessary for the Great Northern to maintain a bridge across the Spokane River and the traffic, it is claimed, does not warrant the expense.

Complainant seeks reparation on the basis of the Spokane commodity rate plus the local switching charge of \$3 per car assessed its competitors on the industrial track, and compares the line-haul movement from Spokane to Hillyard with the switching movement to points on the industrial track, and the ton-mile and car-mile earnings produced by the \$1.30 factor for the distance of 4.8 miles with those under the \$3 per car switching charge for the distance of approximately 9 miles.

Defendants urge that these comparisons lack probative value as the issue is whether the total rate charged for the entire movement was unreasonable. They maintain that the charge for a line-haul movement can not be compared with the charge for a switching movement and that there is no justification for including the city of Hillyard within the switching limits of Spokane. They show that the class-D rate, 3 cents per 100 pounds from Spokane to Hillyard, in effect prior to June 25, 1918, was established in accordance with an order of the rate-making authority of the state of Washington and was increased in accordance with general order No. 28.

In the alternative complainant seeks reparation on the basis of the through rate in effect on June 24, 1918, plus the increase authorized under general order No. 28, as applied to the through rate,

or a rate of \$5.50. As evidence of the unreasonableness of the rate to Hillyard, complainant shows that on August 29, 1919, subsequent to the movement of the shipments in issue, the Railroad Administration established a joint rate of \$5 per ton from Kenilworth to Irvin, Wash., a town 8 miles distant from Spokane, located on the Northern Pacific and Spokane International railroads.

Defendants assert that the \$4.40 commodity rate was established from Utah mines to Huntington, Oreg., under our order in *Consolidated Fuel Co. v. A., T. & S. F. Ry. Co.*, 24 I. C. C., 213; that although Spokane is approximately 400 miles distant from Huntington the fact that it was able to obtain coal from mines in British Columbia, Montana, Wyoming, and Washington made it necessary to blanket the Huntington rate to Spokane, and that the through rate from Kenilworth to Hillyard is reasonable for the service performed.

Defendants compare the revenue per ton-mile of 6 mills under the rate to Hillyard for a four-line haul with revenue produced by rates for a two-line haul established as a result of our order in *Sheridan Chamber of Commerce v. C., B. & Q. R. R. Co.*, 26 I. C. C., 638, as increased under general order No. 28, of 5.8 mills from Alger, Wyo., to Spokane, a distance of 747.7 miles; 4.9 mills from Alger to Tacoma, Wash., a distance of 1,140.6 miles; 5.6 mills from Kirby, Wyo., to Spokane, a distance of 797 miles; and 4.7 mills from Kirby to Tacoma, a distance of 1,189.9 miles. The rate of \$4.90 to Huntington produces ton-mile revenue of 8 mills.

Complainant has competitors on the industrial track in Spokane and contends that a violation of section 2 results from the fact that the portion of the switching movement to the connection with the industrial track at Hillyard is identical with the portion of the line-haul movement to Hillyard. The switching movement does not pass complainant's plant or through the city of Hillyard and the facts stated do not constitute a violation of section 2.

The testimony shows that complainant meets the competition of industries located on the S. F. & N. track and that their proximity enables them to make sales which, except for their more favorable rate situations, would ordinarily be made by complainant. The defendants show that if the Great Northern's charge for switching to the industries on the S. F. & N. track were greater than the regular switching charges assessed on other Spokane industries a discrimination within the city limits of Spokane would result. They maintain that coal dealers within Spokane are on a parity with each other, that those in Hillyard are also on a parity with each other, and that competitive conditions are responsible for the different treatment accorded Spokane and Hillyard.

As hereinabove shown, prior to general order No. 28 the rate from Spokane to Hillyard was 3 cents per 100 pounds or 60 cents a ton for a distance of 4.8 miles. By the application of the minimum class-rate scale provided for in the general order, the rate was increased to 6.5 cents per 100 pounds or \$1.30 per ton, an increase of 70 cents per ton or about 116 per cent. At the same time the rate of \$4.40 to Spokane for a distance of approximately 1,000 miles was increased 50 cents per ton.

Even assuming that the class rate prior to general order No. 28 was reasonable as applied to the transportation of coal, with the increase to the minimum class-rate scale, the resulting rate is seen to be extremely high, more especially when it is considered that the through rate to Hillyard is made by adding to the rate to Spokane of \$4.90 for a haul of about 1,000 miles the rate of \$1.30 for an additional haul of but 4.8 miles. Under ordinary conditions the practice of making through rates by adding to a rate for a long distance the full local rate from the basing point to destination a relatively short distance beyond can not be approved.

While the \$1.30 rate as applied to the transportation from Spokane to Hillyard appears unreasonable, the through rate resulting from the use of this factor in connection with the factor from Kenilworth to Spokane is not upon this record shown to be unreasonable. In *Cairo Board of Trade v. C., C. & St. L. Ry. Co.*, 46 I. C. C., 343, in commenting upon *Stevens Grocer Co. v. St. L., I. M. & S. Ry. Co.*, 42 I. C. C., 396, we said:

In determining whether or not a complainant has been damaged by the exaction of unreasonable or unduly preferential reshipping rates the total through charges paid from point of origin must be considered.

This principle has equal application in this situation.

We are of the opinion and find that the through rate assailed was not and the present rate is not unreasonable, but that the rate was, is, and for the future will be unduly prejudicial to the extent that it exceeded by more than 10 cents, or may exceed for the future by more than 12.5 cents per net ton, the rate contemporaneously in effect from Kenilworth to Spokane. Damage resulting from the undue prejudice has not been proved and reparation will be denied.

An appropriate order will be entered.

No. 11189.

PACIFIC PORTLAND CEMENT COMPANY, CONSOLIDATED,
v.
DIRECTOR GENERAL, AS AGENT, AND SOUTHERN PACIFIC
COMPANY.

Submitted July 16, 1921. Decided November 3, 1921.

Rate on lime rock, in carloads, from Flint to Tolenas, Calif., during federal control found not unreasonable. Complaint dismissed.

H. H. Sanborn and James A. Keller for complainant.

J. R. Bell, Fred H. Wood, C. W. Durbrow, Elmer Westlake, and Frank B. Austin for defendants.

REPORT OF THE COMMISSION.

DIVISION 4, COMMISSIONERS MEYER, DANIELS, AND ESCH.

BY DIVISION 4:

Exceptions were filed by complainant to the report proposed by the examiner, and the case was orally argued before us.

Complainant, a corporation manufacturing cement, plaster, and plaster products, alleges that the rate of 70 cents on lime rock from Flint to Tolenas, Calif., was, during the period from June 25, 1918, to February 29, 1920, excessive, unjust, unreasonable, and unduly prejudicial. The prayer is for reparation only. Except as noted rates are stated in cents per ton and do not include the general increases of 1920.

Complainant's plant is located at Cement, Calif., on the Cement, Tolenas & Tidewater, owned by it, approximately 2 miles from Tolenas, the junction with the Southern Pacific, hereinafter referred to as the carrier, about 52 miles east of San Francisco. Lime-rock quarries of complainant are located on the American River, approximately 7 miles from Flint, a point on the main line of the Ogden route of the carrier, 72 miles east of Tolenas. Complainant uses lime rock in the manufacture of cement, which is distributed and sold in California and other western states. Complainant competes in the sale of cement with plants located at Davenport, Cowell, Napa Junction, and San Juan, Calif., Oswego, Oreg., and adjacent to Seattle and Spokane, Wash., and Salt Lake City, Utah.

Originally complainant secured lime rock from quarries adjacent to Cement. When this source of supply was exhausted it was forced

to seek raw material elsewhere. In 1910, upon its solicitation, the carrier established a rate of 50 cents on lime rock from Flint to Tolenas. Thereafter complainant expended \$900,643 in the construction of the Mountain Quarries Railroad, which extends from quarries on the American River to Flint, and in the installation of milling and quarrying machinery. In 1912 complainant began shipping lime rock from Flint. The rate of 50 cents remained in effect until June 25, 1918, when it was increased, under general order No. 28 of the Director General of Railroads, to 70 cents.

Complainant contends that the rate of 70 cents per ton was unduly high in view of the character of service performed, and in comparison with rates from and to other points on the same and other commodities; that it was unduly prejudicial to complainant, to the undue preference and advantage of other cement companies which enjoyed relatively lower rates for the transportation of the same commodity under substantially similar circumstances and conditions.

Complainant argues that its shipments were moved by the carrier under favorable transportation conditions. It urges that no terminal service was performed by the carrier in connection with the movement of its traffic from Flint to Tolenas, and that consequently the rate covered line-haul service exclusively; that loaded cars were weighed on its scales, thus relieving the carrier of that duty; that no expedited service or special type of equipment was required; that no claims for loss and damage were ever filed; that the movement was continuous throughout the year, and not seasonal; that its cars were heavily loaded, the average being in excess of 60 tons in 1918 and 1919; and that these factors should be given consideration in fixing a reasonable rate for the service.

In the movement of complainant's traffic, loaded cars of rock were placed upon tracks in the yard of the carrier at Flint by motive power of the Mountain Quarries. Upon arrival at Tolenas, these shipments were moved from tracks in the carrier's yard by motive power of the Cement, Tolenas & Tidewater. Empty cars were handled similarly in the opposite direction.

Terminal service was required at Flint in switching carloads of rock into trains; at Roseville, in classifying cars according to destination; and at Tolenas, in setting out cars for delivery. The shipments required inspection at Flint and Roseville. Because of the great weight of the loaded rock cars, it was necessary, at times, on the down grade from Flint, to incorporate empty cars into trains to equalize the braking power. This practice was not peculiar to complainant's traffic, but prevailed on other mountain divisions of the carrier. On account of grades, helper locomotives are required, at

times, between Loomis and New Castle, Calif., to move the trains which transport the empty cars for complainant.

Complainant contends that the increase in the lime-rock rate placed it at a disadvantage in the sale of cement, because the spread between its transportation cost to deliver the cement at competitive points and that incurred by its competitors in northern California was thereby increased. Under the general order, complainant's rates on lime rock inbound and cement outbound were both increased, whereas its competitors in California procured their lime rock from quarries near their cement mills and, accordingly, had only the increase in cement rates to bear. Under the cement adjustment, rates from northern California mills are the same to competitive points, irrespective of distance. The complaint does not attack the rates on cement. The disadvantage complained of is one of geographical location. We have repeatedly held that we may not adjust rates to equalize natural advantages. *Colorado Fuel & Iron Co. v. Director General*, 57 I. C. C., 253, 255.

As shown in the subjoined statement, complainant compares the revenues per car and per car-mile yielded by the rates assailed with those produced by certain other rates on lime rock:

From—	To—	Distance.	Rate per ton.	Car revenue.	Car-mile revenue.	Approximate movement for 1919.
		<i>Miles.</i>			<i>Cents.</i>	<i>Tons.</i>
Flint, Calif.....	Tolenas, Calif.....	72	1 \$0.70	2 \$42.61	59.2	185, 172
Do.....	do.....	72	3 .60	36.52	50.7	
Puntenney, Ariz.....	Glendale, Ariz.....	162	.70	35.00	21.6	
Topliff, Utah.....	Garfield, Utah.....	74	.60	30.00	40.5	12, 491
Do.....	International, Utah.....	65	.60	30.00	46.1	
Buman, Oreg.....	Oswego, Oreg.....	64	.60	30.00	47	25, 000
Carnes, Oreg.....	do.....	202	1.20	60.00	29.7	
Rincon, Calif.....	Bay Point, Calif.....	151.5	.80	40.00	26	
Davenport, Calif.....	Napa Junction, Calif.....	178.3	1.10	55.00	30.5	
Santa Cruz, Calif.....	Emeryville, Calif.....	113.1	.90	45.00	39.5	

¹ Present rate.

² Based on 60,872 tons per car, actual average loading for 1919.

³ Proposed rate.

⁴ Based on estimated loading of 50 tons per car.

⁵ Two-line haul.

Testimony was introduced for the purpose of showing that the circumstances and conditions attendant upon the transportation of lime rock from Flint to Tolenas were substantially similar to those which obtained in the movement of the same commodity from Buman and Carnes to Oswego; Topliff to Garfield and International; Rincon to Bay Point; and Davenport to Napa Junction. The plant of the Oregon Portland Cement Company is located at Oswego. The haul from Buman to Oswego is over branch lines practically all the way, terminal service being performed by the

carrier at point of origin and destination, with transfer at Gerlinger, Oreg. When the cement mill at Oswego is in operation, an average of 30 cars per week are transported from Buman. In the movement of rock from Carnes, helper engines are required at times on the grade between Roseburg and Divide, Oreg. There is no back haul of empty cars from Oswego to Carnes, as empty equipment for loading is brought to Carnes from California. In the movement from Topliff to smelters at Garfield, the Salt Lake performs spotting service at points of origin and destination. From Topliff to International, a two-line haul, spotting is performed by the Salt Lake at Topliff and by the Tooele Valley at destination. A considerable part of the hauls, Davenport to Napa Junction and Rincon to Bay Point, is over branch lines. These movements necessitate some use of helper locomotives and require about six transfers. In case of the the former, terminal service is performed by the carrier at points of origin and destination; in case of the latter, the carrier performs terminal service at point of origin, and delivery is made by the Santa Fe at a charge of \$2.50 per car.

Defendants urge that, originally, rates of 35 cents, Buman to Oswego, and \$1, Carnes to Oswego, were put in force upon application of the Oregon Portland Cement Company; that under general order No. 28 these rates became 60 cents and \$1.20, respectively; and that the present rates are lower than normal. They assert, further, that during the past three years the Oswego plant has not shipped a car of cement into California, whereas complainant has moved a substantial volume of cement into Oregon, which movement during the period January to July, 1920, inclusive, aggregated 209 cars to East Portland, 8 cars to Portland, and 1 car to St. John. The distance Oswego to East Portland is 8.5 miles as compared with 693 miles from Tolenas. Complainant's witnesses were unable to state the prices at which complainant sold cement during the period for which reparation is claimed.

Complainant compares the rate under attack with rates on cement clinker, silica, and other commodities. Cement clinker is partially manufactured cement, which is more valuable than lime rock. A rate cited by complainant, of \$1.20 on cement clinker from Davenport to Napa Junction, yields on basis of an average load of 50 tons per car, revenues per car of \$60, per car-mile of 33.5 cents, and per ton-mile of 6.7 mills, for the distance of 178 miles.

The number of cars, aggregate tonnage, and average weight per car of the shipments of lime rock made by complainant from Flint to Tolenas, during the period for which reparation is asked, were as follows:

Year.	Cars shipped.	Tonnage shipped.	Average loading per car.
		<i>Tons.</i>	<i>Tons.</i>
June 25 to December, 31 1918.....	1,897	115,498.95	60.9
January 1 to December 31, 1919	3,042	185,172.75	60.9
January, 1920.....	458	27,871.9	60.9
February, 1920.....	513	31,187.65	60.8
Total.....	5,910	359,731.25	.....

Complainant sold some hand-picked lime rock to sugar factories during 1919 at an average price of \$1.5829 per ton, which, upon basis of 61 tons per car produced an average sale price of \$96.56 per car. The value of lime rock for cement purposes is approximately the same as crushed rock and gravel used in building construction.

Complainant estimated that the full cost of the rock service, for the loaded and empty movement, was \$23.80 per car in 1918 and \$26.35 per car in 1919. The result can not be accepted as the actual cost, and we need not discuss the methods by which the estimate was obtained.

Defendants compared the rate assailed with rates on the same commodity from and to points in California where shipments aggregated 100 tons or more during the calendar year 1919. The following are selected from these comparisons as representative:

From—	To—	Distance.	Rate per ton.	Tonnage moved 1919.
		<i>Miles.</i>		<i>Tons.</i>
Alico.....	Cartago.....	34	\$0.70	3,913
Flint.....	Manteca.....	91	1.00	1,256
Hollister.....	Emeryville.....	86	1.30	1,094
Davenport.....	Paraffin.....	88	1.00	1,705
Santa Cruz.....	Berkeley.....	82	.90	1,177
Flint.....	Selby.....	104	.90	8,296
Davenport.....	San Francisco.....	87	1.00	1,187
Hollister.....	South San Francisco.....	82	1.10	4,713
Davenport.....	San Jose.....	48	.80	649
Flint.....	Spreckels.....	232	2.00	21,755
Do.....	Tolinas.....	72	.70	185,172.75

Defendants show, further, that a substantial volume of crushed rock and gravel moved from Niles and Logan, Calif., to various points in California on rates which were generally higher, distance considered, than that under attack. Lack of information in the record relative to transportation conditions impairs the value of defendants' comparisons.

The allegation of undue prejudice is not sustained by the evidence.

We find that the rate assailed was not unreasonable. The complaint will be dismissed.

INVESTIGATION AND SUSPENSION DOCKET No. 1371.

SAND AND GRAVEL FROM MICHIGAN CITY, IND., TO
JOHNSTOWN-CONNELLSVILLE TERRITORY.

Submitted October 1, 1921. Decided November 12, 1921.

Proposed increased rates on sand and gravel, in carloads, from Michigan City, Ind., to Johnstown-Connellsville territory found justified. Order of suspension vacated.

L. P. Day for respondent.

A. O. Ohlemacher for protestant.

J. H. Kane and *R. E. Riley* for Silica Sand Producers Association.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

By schedules filed to take effect on August 1, 1921, the Michigan Central, hereinafter referred to as respondent, and its connections proposed to increase the rates on sand and gravel, in carloads, from Michigan City, Ind., to points in Johnstown-Connellsville territory, viz, Blairsville, Brownsville, Connelville, Crabtree, Johnstown, Leckrone, and Masonville, Pa., and Grafton, W. Va. Upon protest of the Ohlemacher Brick Company, owner of a sand plant on respondent's line near Michigan City, these schedules were suspended until December 30, 1921. Rates and difference in rates will be stated in amounts per net ton.

Michigan City is about 57 miles east of Chicago, Ill. It is reached by the lines of respondent and those of the Lake Erie & Western, the Chicago, Indianapolis & Louisville, and the Pere Marquette. The destinations named are east and southeast of Pittsburgh, Pa. The short-line distance to Pittsburgh is 427 miles. To these destinations the short-line distances range from 40 to 167 miles greater, and average about 79 miles greater, than to Pittsburgh. The present rates are \$3.60 to Johnstown and \$3.40 to other destinations. The proposed rates are \$4.34 and \$4.06, respectively, and protestant contends that they are higher than the traffic will bear and reflect unreasonable differentials or differences over the rate to Pittsburgh.

The proposed rates exceed by 40 per cent the rates in effect prior to the general increase of 1920. They are the same as the present rates of the other lines serving Michigan City and the rates maintained by respondent from August 26, 1920, to May 15, 1921. On the latter date respondent reduced its rates to the present basis through error of its tariff bureau. The proposed rates would yield lower ton-mile earnings than do the present rates from the Ottawa, Ill., district for about the same distances to destinations in central and trunk line territories. The rates on sand from Ottawa to territory east of the Indiana-Illinois line, in effect prior to the general increase of 1920, were considered in *Silica Sand Producers' Asso. v. Director General*, 58 I. C. C., 549, and with one exception were found not unreasonable. As there shown, Ottawa is less favorably situated with respect to this traffic than is Michigan City and the Ottawa sand is more valuable. The ton-mile earnings under the proposed rates would range from 6.8 mills to Grafton, 595 miles, to 8.6 mills to Crabtree, 468 miles, and 8.7 to Johnstown, 504 miles. For the average short-line distance of 506 miles to all points in the destination territory, except Johnstown, the proposed rate of \$4.06 would yield 8 mills per ton-mile.

Protestant has made no shipments to Johnstown-Connellsville territory, but asserts that under normal business conditions it would probably ship some molding sand if the present rates are maintained. It makes such shipments to Pittsburgh and points grouped therewith, but owing to inadequate car supply has made no attempt until recently to extend its business to Johnstown-Connellsville territory. There is no evidence of any movement to that territory from Joliet, Ottawa, or other competing points.

The rates to Pittsburgh are \$2.80 from Michigan City and \$4.48 from Ottawa. The short-line distance from Ottawa is 552 miles, or 125 miles greater than that from Michigan City. Under present rates from Michigan City, Pittsburgh takes 80 cents less than Johnstown and 60 cents less than any other destination in Johnstown-Connellsville territory. These differences would become \$1.54 and \$1.26, respectively, under the proposed rates.

Protestant urges that the same differentials over Pittsburgh should be used in making rates from Michigan City as from Ottawa and other points. Prior to the general increase of 1920 the rates on sand from producing points in central territory, except Michigan City, to Johnstown-Connellsville territory had long been based on differentials of 60 cents to Johnstown and 40 cents to the other points over the Pittsburgh rates. The present differences are 84 and 56 cents, respectively. The former differentials were also observed in making rates from Michigan City prior to February 29, 1920. Effect-

tive on that date the rate from Michigan City to Pittsburgh was reduced by 50 cents, thereby widening the spread to \$1.10 to Johnstown and 90 cents to other points. Under the general increase of 1920 these differences became \$1.54 and \$1.26, respectively, and these latter differences obtained until May 15, 1921, when the present rates were established. The proposed rates would yield higher ton-mile and car-mile earnings than does the rate to Pittsburgh, contrary to the general rule that such earnings should decrease as the distance increases. The Pittsburgh basis of rates applies to a large intermediate territory and it is not shown that the distance to Pittsburgh is representative of the average distance to destinations in the Pittsburgh district. In *Silica Sand Producers' Asso. v. Director General*, *supra*, we said at page 552:

Such irregularities are to be found in any group system of rates, and so long as the rates are not unreasonable, or otherwise in violation of the act, the fact that the method of progression is not according to any particular mathematical system does not subject them to condemnation.

Considering only the average difference in distance from Michigan City to Pittsburgh and to Johnstown-Connellsville territory and the uniform differential adjustment that obtains from other sand-producing points in central territory, the proposed rates appear to be high. But they reflect the same percentage of increase over the rates in effect prior to the general increase of 1920 as has been made in the rates from all other sand-producing points in central territory, and the evidence tends to show that they would be properly related to the present rates from such other points. The great differences between the Pittsburgh rate and the proposed rates from Michigan City are due to substantial reduction in the former rate on February 29, 1920, rather than to any disproportionate increases in the rates to Johnstown-Connellsville territory. Under the present rates the benefit of that reduction and the advantage which protestant now has in the Pittsburgh district over shippers from Ottawa and other points have been extended to Johnstown-Connellsville territory. In *Silica Sand Producers' Asso. v. Director General*, *supra*, we said, at page 556:

Generally speaking, the rates from Michigan City are a little lower than the rates from Chicago and Joliet, for the reason that to points east thereof the distance and the volume of movement are slightly in favor of Michigan City. The rates from the Ottawa district are a little higher, and from Michigan City a little lower, than the rates from Chicago. This would seem to be a normal and reasonable adjustment.

When that case was decided the rates from Michigan City to Pittsburgh and Johnstown-Connellsville territory were uniformly

10 cents less than the rates from Joliet and Chicago, as compared with the present differences of 84 cents to Pittsburgh, 88 cents to Johnstown, and 80 cents to other points, and with the uniform difference of 14 cents to all points in Johnstown-Connellsville territory under the proposed rates.

Upon all the facts of record we find that the proposed increased rates have been justified. An order will be entered vacating our order of suspension and discontinuing the proceeding.

INVESTIGATION AND SUSPENSION DOCKET No. 1355.

STONE FROM BRIDGEPORT AND MASCOT, TENN., TO
LOUISVILLE & NASHVILLE R. R. STATIONS.

Submitted August 30, 1921. Decided November 8, 1921.

Proposed cancellation of joint interstate rates on stone, ground or powdered, from Bridgeport and Mascot, Tenn., to Louisville & Nashville stations found not justified. Suspended schedules ordered canceled.

John K. Dent for Louisville & Nashville Railroad Company.
C. R. Moffet and *H. D. Snow* for protestant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

By DIVISION 3:

By schedules filed to become effective July 5, 1921, respondents proposed to increase the interstate rates on stone, ground or powdered, from Bridgeport and Mascot, Tenn., to Louisville & Nashville stations. Upon protest of the Traffic Bureau of Knoxville, Tenn., on behalf of the American Limestone Company, the proposed schedules were suspended until December 2, 1921.

The Louisville & Nashville, the carrier at whose instance the increase is sought, was the only carrier represented at the hearing and will be referred to as respondent.

Mascot and Bridgeport are on the Southern, 14 and 69 miles, respectively, east of Knoxville.

Effective October 1, 1918, a joint distance scale of rates was established on stone, ground or powdered, from Mascot and Bridgeport to stations on the Louisville & Nashville and the Nashville, Chattanooga & St. Louis to which no specific commodity rates had been provided. By the suspended schedules respondent proposes to cancel

its concurrence in those joint rates, thereby leaving in effect combinations composed of the local rates of the Southern to its junctions with respondent and respondent's local rates beyond.

Respondent's attempted justification of the proposed change is based upon the assumption that, if the present joint distance scale is canceled, commodity rates based upon a certain scale would be applicable from its junctions with the Southern; and the further assumption that agent Kelly's tariff I. C. C. U. S. 1 would be applicable in the construction of the resulting combination rates to and beyond the junctions of the Southern with respondent. Both assumptions are erroneous.

The commodity rates are not published from the junctions to the interstate destinations here considered, except in one or two isolated instances, and therefore class rates would apply.

Agent Kelly's tariff authorizes a reduction of 30 cents per ton from the resulting combination of rates. The tariff of the Southern carrying its local rates to the junctions does not specifically refer to Kelly's tariff. That tariff has application only where both factors are commodity rates.

We find that the suspended schedules have not been justified. An order will be entered requiring their cancellation and discontinuing this proceeding.

64 I. C. C.

No. 12092.

OHIO AND PENNSYLVANIA RATES, FARES, AND CHARGES.

IN THE MATTER OF RATES, FARES, AND CHARGES OF
THE STEUBENVILLE, EAST LIVERPOOL & BEAVER
VALLEY TRACTION COMPANY WITHIN THE STATES
OF OHIO AND PENNSYLVANIA.

Submitted April 8, 1921. Decided November 7, 1921.

Certain intrastate passenger fares maintained by petitioner in Ohio found to be unduly preferential of intrastate passengers, unduly prejudicial to interstate passengers, and unjustly discriminatory against interstate commerce. Fares prescribed which will remove such preference, prejudice, and discrimination.

Agnew Hice, T. H. Hogsett, and C. R. Marshall for petitioner.

Edward E. Corn for Public Utilities Commission of Ohio.

Perry L. Rigby for city of East Liverpool, Ohio; *Ralph Levinson* for city of Steubenville, Ohio; and *Charles Boyd* for city of Wells-ville, Ohio.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

This proceeding was instituted by us upon petition filed on behalf of the Steubenville, East Liverpool & Beaver Valley Traction Company, hereinafter called the traction company, operating an electric interurban line between Vanport, Pa., and Steubenville, Ohio, and intermediate points, and also a local service between certain points within Ohio, and a branch line to Chester, W. Va. In substance the petition alleges that by reason of various franchises, ordinances, and regulations imposed under authority of certain municipalities of the states of Ohio and Pennsylvania, the petitioner is unable to increase its fares for the transportation of passengers intrastate to the basis maintained on interstate traffic, resulting in undue and unreasonable advantage and preference to persons and localities in intrastate commerce on the one hand and in undue prejudice and disadvantage to other persons and localities in interstate commerce on the other hand, and also in unjust and unreasonable discrimination against interstate commerce; and further, is deprived of sufficient revenue to pay its operating expenses, including taxes and the cost of maintaining

its property devoted to the service. Passenger fares only are involved.

The main line of the traction company, which is double tracked, extends along the Ohio River from Vanport, Pa., west to the Pennsylvania-Ohio state line, hereinafter referred to as State Line, thence in a general southerly direction to Steubenville, Ohio, a total distance of 40.2 miles. Of this trackage 11.4 miles are in Pennsylvania and 28.8 miles in Ohio. The line passes through various cities, townships, villages, and boroughs, including Midland and Glasgow, Pa., East Liverpool, Wellsville, and Toronto, Ohio.

The traction company was formed in 1917 by the consolidation and merger of the Steubenville & East Liverpool Railway & Light Company, which owned and operated an electric railway from a point in Steubenville to the boundary line between Columbiana and Jefferson counties; the East Liverpool Traction & Light Company, which operated an electric railway from the above-mentioned boundary line through Columbiana county to State Line, including street railways in East Liverpool and the line to Chester; and the Ohio River Passenger Railway Company, which operated an electric railway from State Line to Vanport. The main line throughout a greater part of its length is constructed upon a bench cut into the river bluffs, or is supported by embankments, in many cases requiring extensive masonry and retaining walls. It is paralleled by a line of the Pennsylvania system. Between Steubenville and Vanport there are a number of streams entering the Ohio River, necessitating expensive construction for bridges and culverts.

Beside a coal branch there are six branch lines engaged in transporting passengers, four in East Liverpool and two in Steubenville. Those in East Liverpool start from a point in the center of the city called "the diamond" and are known as (1) the Chester line, 2.5 miles, crossing the Ohio River on a steel suspension bridge 1,700 feet in length and 90 feet above the water; (2) the river line, 2.7 miles in length, paralleling the Ohio River; (3) the Pleasant Heights line, 1.52 miles; and (4) the Grandview line, 3.28 miles. Both of the latter lines are constructed upon steep grades in order to reach the upper levels on the hilltops north of the city. In *City of East Liverpool, Ohio, v. S., E. L. & B. V. T. Co.*, 51 I. C. C., 563, we approved a fare of 10 cents between East Liverpool and Chester and the fares over this branch are not here in issue. In Steubenville there are the Fourth street and La Belle View lines, 2.29 and 2.91 miles in length, respectively. The La Belle View line is also constructed upon a steep grade. All the branch lines, except that to Chester, are single track. The main line and also the branches are, for the greater dis-

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tances, upon private rights of way, but where they pass through towns and villages they are generally upon streets and highways.

The company maintains an hourly interurban passenger service upon its main line between Vanport and Steubenville. Passengers, however, are required to change cars at the diamond in East Liverpool. The traction company handles no baggage as such. A daily freight service is maintained between Steubenville and Midland, Pa., and a through car runs from Steubenville to Beaver, Pa., a point on the Beaver Valley Traction line a few miles east of Vanport, as often as the traffic demands, which at time of hearing was about once a week. Except for this traffic to Beaver the traction company handles only freight local to its line. No freight is handled over the branch lines. The traction company files its tariffs with this Commission, and publishes interstate passenger fares between points on its line. It is subject to our jurisdiction. *City of East Liverpool, Ohio, v. S. E., L. & B. V. T. Co., supra.*

At Vanport the traction company connects with the Beaver Valley Traction Company, which in turn connects with the Pittsburgh & Lake Erie Railroad at Beaver. It is stated that as a result of these connections the traction company receives at Vanport full carloads of passengers destined to various points along its line. The Wheeling Traction Company transports large numbers of passengers into Steubenville from Wierton, Follansbee, Wellsburg, and Wheeling, W. Va., and from Bridgeport, Mingo, and other places on the Ohio side of the river, who avail themselves of the facilities of the traction company to reach points between Steubenville and Vanport.

The interstate fares of the traction company now in effect are published in its tariff I. C. C. No. 8. This tariff publishes, among others, fares for through service between Vanport and Steubenville and between all points on its main line both in Pennsylvania and Ohio. It contains no provision for free transfers.

A tariff naming the same scale of fares as carried in I. C. C. No. 8 was permitted to become effective September 20, 1920, by the Public Service Commission of Pennsylvania, but a similar tariff was rejected by the Public Utilities Commission of Ohio on the ground that the fares charged by the traction company in that state were regulated by municipal ordinances and franchises granted to its predecessors and therefore beyond the power of the state authorities to change. Under the terms of franchise ordinances of Wellsville and East Liverpool the traction company is prohibited from charging more than 5 cents for the transportation of passengers between the eastern limit of East Liverpool, which is State Line, and the boundary line between Columbiana and Jefferson counties,

which is approximately the western limit of Wellsville, a distance of 10.7 miles. In addition it is required to furnish free transfers to branch-line points in East Liverpool, except to Chester. The interstate fare from State Line to Woosters, which is also approximately at the western limit of Wellsville, a distance of 10.4 miles, is 20 cents.

By franchise ordinances of the village of Toronto the traction company is required to charge a fare not in excess of 5 cents between Fosterville and Costonia, 4.2 miles, with 13 tickets for 50 cents. These two points are between Country Club and Minors, south of the county line, and the interstate fare between these latter points is 20 cents for 7.2 miles. By franchise ordinances of Steubenville, the traction company may not charge more than 5 cents within that city, or six tickets for 25 cents, with free transfers. This was modified on April 8, 1919, so as to allow a fare of not more than 6 cents, or nine tickets for 50 cents, with free transfers. The increase was limited to expire April 8, 1921. The interstate fare over the interurban line from the city limits of Steubenville to the end of the line at Sixth street, 1.7 miles, is 10 cents. The interstate fare over the branch lines in Steubenville is 8 cents, except that between Crawford avenue and Wellesley avenue, 4.32 miles, it is 16 cents.

The interstate fare between Smiths Ferry, Pa., and Woosters, Ohio, 11.7 miles, is 25 cents, while the intrastate fare between State Line and Woosters, 10.4 miles, is 5 cents. The fare from Smiths Ferry to State Line is 10 cents and from State Line to Woosters, intrastate, 5 cents. Through passengers may therefore defeat the interstate fare to the extent of 10 cents a trip by buying tickets or tendering cash fares to and from State Line. The interstate fare from East Midland, Pa., to Country Club, Ohio, 29.7 miles, is 65 cents, while the intrastate fare from State Line to Country Club, 24.5 miles, is 40 cents. Here, also, by the use of the intrastate fare from State Line to Country Club, the interstate fare may be defeated to the extent of 10 cents. In the interurban service interstate passengers and intrastate passengers ride in the same cars and over the same rails.

In the following table interstate interurban fares between representative Ohio points on the traction company's line, provided in tariff I. C. C. No. 8, are stated with earnings per mile thereunder. These are compared with the fares and earnings under the intrastate scale between the same points.

From—	To—	Distance.	Interstate.		Intrastate.	
			Fare.	Earnings per passenger-mile.	Fare.	Earnings per passenger-mile.
		Miles.	Cents.	Cents.	Cents.	Cents.
State Line.....	East Liverpool (terminal).....	3.8	10	2.63	5	1.31
Do.....	East Liverpool (diamond).....	4.1	15	3.66	5	1.22
Do.....	Woosters (western limit of Wells-ville).....	10.4	20	1.92	5	.43
Woosters.....	Kountz.....	3.9	10	2.56	5	1.28
Steubenville (city limits).....	Country Club.....	2.6	10	3.84	5	1.92
Country Club.....	Jeddo.....	3	10	3.33	10	3.33
Jeddo.....	Myers' Lane.....	2	10	5	5	2.5
Myers' Lane.....	Minors.....	2.2	10	4.54	10	4.54
State Line.....	Steubenville (city limits).....	27.1	60	2.21	45	1.66
Do.....	Steubenville (Sixth street).....	28.8	65	2.26	51	1.77
Country Club.....	East Liverpool (diamond).....	20.4	50	2.45	40	1.96
Myers' Lane.....	State Line.....	19.5	45	2.3	35	1.79

The lower intrastate fares have had the effect of practically denying to the traction company the use of its interstate fares. For example, the through interstate fare from Vanport to the terminus of the line at Sixth street, Steubenville, 40.2 miles, is 90 cents. A passenger boarding a car at Vanport and stating his destination as State Line will pay a fare of 30 cents; he can then pay an intrastate fare of 51 cents from State Line to Steubenville, thus defeating the interstate fare by 9 cents. The interstate fare from Vanport to Woosters is 45 cents. A passenger stating his destination as State Line can pay 30 cents to that point and then the intrastate fare of 5 cents to Woosters, defeating the interstate fare by 10 cents. The same relative situation exists going in the reverse direction from Steubenville, and examples could be multiplied.

It is to be noted that between points in Ohio on the traction company's line where fares are not held down by municipal franchises and ordinances the intrastate and interstate fares are more nearly on a parity. For example, between Country Club and Jeddo, 3 miles, and between Myers' Lane and Minors, 2.2 miles, the intrastate fares are the same as the interstate, 10 cents; also between the city limits of Steubenville and Jeddo, 5.6 miles, the intrastate fare is 15 cents, the same as the interstate fare.

In the interurban service between Vanport and Steubenville and intermediate points the fares increase 5 cents for each zone. The minimum fare provided in the interstate schedule is 10 cents. This is not, strictly speaking, a minimum fare, although usually so designated in the record, but is in fact an initial fare and by the manner in which it operates results in the collection of an additional amount of 5 cents. For illustration, three 5-cent zones are included from State Line to Woosters, but by reason of this initial fare a pas-

senger boarding an interurban car at State Line for Woosters pays a fare of 20 cents. If this were a minimum charge the fare would be 15 cents. A minimum fare of 10 cents in interurban service appears to be reasonable and has been approved in numerous instances by the Public Service Commission of Pennsylvania and the Public Utilities Commission of Ohio, but no sufficient justification has been shown on this record for the collection of this amount as an initial fare; provided, however, that this is not to be construed as requiring the maintenance of any interstate fare between points on the traction company's line lower than the intrastate fare contemporaneously maintained between the same points.

The traction company also maintains a local interurban service between State Line and Woosters, the western limits of Wellsville, 10.4 miles, operating through the city of East Liverpool, East Liverpool township, and Wellsville. The present intrastate fare for this service, as hereinbefore stated, is 5 cents, with free transfers to branch-line points in East Liverpool. This fare yields less than 5 mills per mile. Under its tariff I. C. C. No. 8 the traction company divides this local service into three zones: (1) State Line to diamond in East Liverpool, 4.1 miles; (2) diamond to Kountz, 2.4 miles; (3) Kountz to Woosters, 3.9 miles. An interstate fare of 5 cents is provided for each zone with no transfers. For these respective distances this 5-cent fare yields per passenger-mile revenues of 1.22, 2.08, and 1.28 cents. A 5-cent fare, therefore, for each of these zones would appear amply justified. The evidence shows that because of the lower intrastate fare the interstate local fares are defeated and the traction company has seldom been able to derive any benefit from them. For example, the interstate fare from Vanport to Woosters is 45 cents. A passenger boarding a car at Vanport with Woosters as his intended destination, by paying the fare of 30 cents to the State Line and then the local intrastate fare of 5 cents to Woosters, effectually evades the payment of the interstate fare from Vanport to Woosters as well as the interstate fare from State Line to Woosters. There is considerable traffic on this local division, the number of revenue passengers for the year ended December 31, 1920, being shown as 3,227,652.

The intrastate fare in effect over the city or branch lines above referred to is 5 cents, except when transfers are used. The interstate fare is 8 cents, except that between Crawford avenue and Wellesley avenue, in Steubenville, as above shown, it is 16 cents.

The traction company asserts that because of the low intrastate fares it is unable to secure sufficient revenue to pay the cost of operating and maintaining its railway and taxes thereon; that its bond interest is in default of payment for more than a year; and that the

costs of the railway are continually increasing. It is shown that the line in many respects is in a run-down condition. Many bridges and trestles should be immediately repaired or renewed, but the company is unable to remedy this condition because of lack of funds. It has sought relief from the several Ohio municipalities which control the intrastate fares, also from the Ohio legislature, but without avail. It is averred that unless relief is granted by this Commission by removing the unjust discrimination complained of by raising the intrastate fares to the level of the interstate fares it will be compelled in the near future to discontinue its functions as an interstate carrier.

The following table summarizes the results of operation for the years 1918, 1919, and 1920:

	1918	1919	1920
Income.....	\$770,167.50	\$840,600.62	\$949,171.49
Operating costs.....	601,980.59	725,893.91	865,997.12
Net income.....	168,186.91	114,706.71	83,174.37
Taxes.....	53,932.99	58,841.96	66,441.94
Net income less taxes.....	114,253.92	55,864.75	16,732.43
Interest on bonds.....	74,150.00	74,150.00	74,150.00
Interest on unfunded debt.....		4,650.00	
Interest on deposits.....	3,705.10	6,173.93	4,799.24
Surplus.....	43,809.02	def. 16,761.32	def. 62,618.33

Interest on bonds has not been paid since November, 1919. Wages of conductors, motormen, and trainmen, increased from \$148,841.25 in 1918 to \$162,057.99 in 1920, and \$197,522.49 in 1921, and during those years the cost of power purchased more than doubled, increasing from \$60,606.01 in 1918 to \$114,196.20 in 1919, and again to \$134,613.14 in 1920.

The freight earnings reported in the traction company's annual reports under express were in 1919, \$14,864.79 and in 1920, \$23,018.09. The evidence indicates that these freight revenues exceed the freight operating expenses.

The traction company also submitted statements of passenger earnings on various portions of its system, but in preparing these figures it charged to passenger traffic the entire operating expenses of the line. In the city of Steubenville, during the year 1920, the passenger earnings, less operating expenses, were \$20,821.65 on the interurban line, \$3,759.57 on the Fourth street line, and \$4,216.18 on the La Belle View line; a total of \$28,797.40. Between Fosterville and Costonia there was a deficit of \$5,725.20, and south of the county line the interurban line earned an excess of \$17,491.36 over operating costs. Between the state and county lines there was a deficit of \$53,862.89, of which \$38,757.42 was on the main line. The only branch line in the city of East Liverpool showing a profit was the

Chester line. It earned a profit in Ohio of \$5,107.75, and in West Virginia of \$18,882. The total number of passengers handled on the entire line during the year 1920 was 10,720,707.

Evidence offered by the Ohio municipalities shows that certain relief has been offered to the traction company, but that the company has refused to accept it. The traction company shows that whatever relief has been offered has always been accompanied with such further restrictions as to make its acceptance of doubtful value; and, that, as a result of the interlocking nature of the franchises and ordinances of the different municipalities, it is practically impossible to get them in agreement on any measure of relief.

It is contended by the municipalities (a) that jurisdiction does not lie in this Commission to alter the fares fixed by ordinance or franchise; and (b) that the merger of electric railways originally performing purely intrastate and principally city street-car service into the present operating company does not change their original status. As to the latter contention, it is sufficient to say that whatever may have been the original service afforded by the respective railways at the time of the merger, the traction company now is carrying on much more than a street-railway business. In its inter-urban operations it now assumes the status of an electric railway, and as such it is engaged in interstate transportation.

As to the first contention: There is not encountered here the usual assumption on the part of the state of jurisdiction over such service, the state of Ohio not having withdrawn from municipalities the franchise privilege and power over highways. There is encountered, however, an exceptional assumption of extraterritorial jurisdiction by municipalities. While under the *Omaha street-railway decision*, *Omaha Street Ry. v. Int. Com. Comm.*, 230 U. S., 324, it may consistently be argued that this Commission has no jurisdiction over a city street-car line and may not impose rates and conditions for local service other than those stipulated in a franchise, it is not seriously to be contended that the federal government in its efforts to maintain facilities of interstate communication and to prevent discrimination is to be prevented by municipalities which, in franchises involving the use of their local streets, assume to regulate the rates to be charged to and between other cities; and particularly when such franchises impose rates which, under present conditions, obviously are unjust and which menace maintenance of interstate transportation facilities and service.

We are not satisfied on this record that we are warranted in disturbing the intrastate basis of fares now in effect on petitioner's branch or city lines, nor are we convinced that the issuance of trans-

fers as now in effect intrastate is unreasonable in connection with fares for interstate travel, provided, however, that such transfers to the interurban line between Vanport and Steubenville, or to local cars operating between State Line and Woosters, should be valid for transportation over one zone only.

We are of opinion and find, subject to the reservations above noted with respect to the initial fares, fares on branch or city lines, and the issuance of transfers, that the interstate passenger fares of the traction company between Vanport and Sixth street, Steubenville, and intermediate points, and designated as "through service rates" in its tariff I. C. C. No. 8, and the interstate passenger fares between East Liverpool (State Line) and the diamond in East Liverpool; between the diamond and Kountz; and between Kountz and Woosters, as published in the traction company's tariff I. C. C. No. 8 among its list of rates designated "local service rates," are just and reasonable interstate fares for the respective services between those points; and that the maintenance of intrastate fares between the same points lower than the just and reasonable interstate fares has resulted and will result in undue prejudice to persons traveling in interstate commerce over the traction company's lines in the state of Ohio and between points in the state of Ohio and points in the state of Pennsylvania; in undue preference of and advantage to persons traveling intrastate between points in Ohio; and in unjust discrimination against interstate commerce.

We further find that, whether the aforesaid passenger fares pertain to transportation in interstate commerce or to transportation in intrastate commerce, the transportation services are performed by the traction company under substantially similar circumstances and conditions; and that said undue prejudice and preference and unjust discrimination can and should be removed by establishing intrastate passenger fares not less than the interstate passenger fares herein found reasonable; provided, however, that the fares herein authorized are for application in connection with through travel, irrespective of municipal limits, on the interurban operations of petitioner, and nothing herein is to be construed as authorizing any change in the fares as now in effect on the traction company's line for transportation of passengers who begin and end their journey within the limits of any municipality.

An appropriate order will be entered.

COMMISSIONERS AITCHISON, EASTMAN, POTTER, and CAMPBELL dissent.

INVESTIGATION AND SUSPENSION DOCKET NO. 1364.
CLASS RATES BETWEEN EL PASO, TEX., AND POINTS
IN NEW MEXICO AND ARIZONA.

Submitted September 26, 1921. Decided November 12, 1921.

Proposed increased class rates between El Paso, Tex., and points on lines of the Atchison, Topeka & Santa Fe west of Rincon and Belen, N. Mex., found not justified. Suspended schedules ordered canceled.

E. C. Iden for respondents.

F. C. Tockle and *A. W. Norcop* for El Paso Chamber of Commerce.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

By schedules filed to become effective July 20, 1921, respondents proposed to increase class rates between El Paso, Tex., and certain contiguous points in Texas, on the one hand, and on the other, all points on the lines of the Atchison, Topeka & Santa Fe, hereinafter termed the Santa Fe, west of Rincon, N. Mex. This would result in increases of 35 per cent over the corresponding rates of August 25, 1920. Similar increases are proposed in all class rates between El Paso and points in New Mexico on the line of the Santa Fe west of Dalies, from Rio Puerco to Manuelito, and on some of the lower classes between El Paso and points in Arizona from Lupton to Sanders. Upon protest of the El Paso Chamber of Commerce, these schedules were suspended until December 17, 1921.

The boundary line between western and mountain-Pacific groups, as defined in *Increased Rates, 1920*, 58 I. C. C., 220, follows the line of the Santa Fe from Trinidad, Colo., through Raton, Las Vegas, and Albuquerque, N. Mex., to El Paso. The rates here considered apply between El Paso, on the boundary line between the two groups, and points in the mountain-Pacific group. On August 26, 1920, class rates between El Paso and points on the Santa Fe in the western group, including Belen, N. Mex., were increased by 35 per cent in conformity with *Increased Rates, 1920, supra*. Contemporaneously similar rates between El Paso and Felipe, the first station west of Belen, and points

west thereof to and including Sanders, Ariz., all of which are in the mountain-Pacific group, were increased by 25 per cent. The greater increases to and from the less-distant points produced fourth section departures with respect to the rates at stations Felipe to Suwanee, N. Mex., inclusive, on the Santa Fe's line west of Belen, which were eliminated on April 15, 1921, by increasing the rates to and from the latter points to the basis of the Belen rates. The proposed increases in the class rates, Rio Puerco to Manuelito, N. Mex., would make them 35 per cent in excess of the rates on August 25, 1920. The first-class rates illustrate the general class-rate situation:

Between El Paso and—	Prior to Aug. 25, 1920.	On Aug. 26, 1920, and now in effect. ¹	Pro- posed. ²
Belen, N. Mex.	\$1.165	² \$1.575	\$1.575
Rio Puerco, N. Mex.	1.225	² 1.53	1.655
Laguna, N. Mex.	1.29	1.615	1.74
Cubero, N. Mex.	1.35	1.69	1.825
Grants, N. Mex.	1.415	1.77	1.91
Thoreau, N. Mex.	1.475	1.845	1.99
Perea, N. Mex.	1.54	1.925	2.08
Manuelito, N. Mex.	1.60	2.00	2.16

¹ Except for Belen, these rates represent rates of Aug. 25, 1920, increased by 25 per cent.

² Represent rates of Aug. 25, 1920, increased by 35 per cent.

³ Increased to \$1.575 on Apr. 15, 1921.

Between El Paso and points in Arizona the only increases proposed are on classes C, D, and E at Lupton, C and E at Allantown, and E at Houck, Querino, and Sanders, to avoid fourth section departures under the proposed rates at Manuelito.

The increases made in class rates between El Paso and Rincon and points on lines of the Santa Fe west thereof, under *Increased Rates, 1920, supra*, resulted in fourth section departures at Hatch, N. Mex., and some other points west of Rincon similar to those west of Belen. Effective December 1, 1920, these departures west of Rincon were removed by increasing the rates to and from the more distant points to the basis of the Rincon rate. Respondents now propose increases in the class rates between El Paso and points west of Rincon which will make them 35 per cent in excess of the rates on August 25, 1920. No increase in excess of 25 per cent over the rates on August 25, 1920, is proposed between El Paso and Deming, N. Mex., a common point of the Santa Fe, El Paso & Southwestern, and Southern Pacific, because the lines not respondents herein have not agreed to the change. The class-rate situation on the Santa Fe lines west of Rincon is indicated by the following comparison of first-class rates:

Between El Paso and—	Prior to Aug. 26, 1920.	On Aug. 26, 1920. ¹	As in- creased Dec. 1, 1920.	Pro- posed.
	Cents.	Cents.	Cents.	Cents.
Rincon, N. Mex.	61.5	² 83		² 83
Hatch, N. Mex.	62.5	78	83	² 84.5
Nutt, N. Mex.	67.5	84.5		² 87.5
Lake Valley, N. Mex.	74	92.5		² 100
Deming, N. Mex.	70	87.5		87.5
Whitewater, N. Mex.	89	111.5		² 120
Silver City, N. Mex.	96.5	120.5		² 130.5
Santa Rita, N. Mex.	96.5	120.5		² 130.5

¹ Except for Rincon, these rates represent rates of Aug. 25, 1920, increased by 25 per cent.

² Represent rates of Aug. 25, 1920, increased by 35 per cent.

Respondents contend that the increases proposed are necessary in order to eliminate fourth section departures and restore certain relationships which existed prior to August 26, 1920. They rely largely upon our expression in *Increased Rates, 1920, supra*, at page 247, that "territorial boundaries heretofore recognized should be observed."

Respondents direct attention to the fact that the distance class rates applicable locally between all points in New Mexico on the Santa Fe have been increased by 35 per cent since August 25, 1920. They assert that this was done to preserve the uniform basis of class rates applicable on lines of the Santa Fe in New Mexico, as prescribed by the State Corporation Commission of New Mexico in formal cause No. 16, on June 7, 1916. The proposed rates are on a substantial parity, for equal distances, with the present New Mexico intrastate class rates applicable on the Santa Fe, and are uniformly lower than the interstate distance scales applicable in New Mexico, between New Mexico and Arizona, and in Arizona, for all distances, and the intrastate distance scale applicable in Arizona for distances up to 315 miles.

Protestant compares the rates in issue with similar rates for approximately the same distances from Denver, Colo., to representative points in Colorado and New Mexico on the Denver & Rio Grande west of Pueblo, and from Cheyenne, Wyo., west to destinations on main and branch lines of the Union Pacific. The situation with respect to those points is identical, in so far as the rate groups are concerned, with that of the points here considered. Those rates were increased 25 per cent as authorized in *Increased Rates, 1920, supra*. The rates proposed are considerably higher in all cases than the rates compared from Denver and Cheyenne. There are severe operating conditions and difficult grades on lines of the Denver & Rio Grande which serve many of those points.

Prior to August 26, 1920, rates between El Paso and the other points here considered were on a substantial equality, for comparable

distances, with the New Mexico intrastate distance rates. No other reasons for continuing such a relationship have been advanced by respondents. In *Increased Rates, 1920, supra*, we authorized an increase of 25 per cent, not 35 per cent, in the interstate class rates between points in New Mexico west of the main line of the Santa Fe, extending south from Trinidad to El Paso; and if the intrastate rates in that portion of the state had been increased in like measure the former parity between the rates here considered and New Mexico intrastate class rates would have been preserved. The proposed rates were not filed with us until July 20, 1921, 11 months after the increases authorized in *Increased Rates, 1920, supra*, became effective. During the interim, class rates between the same points represented increases of only 25 per cent over the rates on August 25, 1920.

We find that respondents have not justified the proposed increased rates. An order will be entered requiring the cancellation of the schedules under suspension, and discontinuing this proceeding.

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INVESTIGATION AND SUSPENSION DOCKET No. 1399.
LUMBER FROM NORTH TONAWANDA, N. Y., TO
CANANDAIGUA, N. Y.

Submitted October 12, 1921. Decided November 15, 1921.

Proposed cancellation of an interstate commodity rate on lumber, in carloads, from North Tonawanda to Canandaigua, N. Y., found not justified. Suspended schedule ordered canceled.

No appearance for respondents.

Henry Adema for White Pine Association of the Tonawandas.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND LEWIS.

BY DIVISION 3:

By schedule filed to become effective September 13, 1921, respondents proposed to cancel a commodity rate of 12.5 cents on lumber and certain named forest products, in carloads, from North Tonawanda to Canandaigua, N. Y., for application on interstate shipments. This would result in application of the sixth-class rate of 14.5 cents. Upon protest of the White Pine Association of the Tonawandas the schedule was suspended until January 11, 1922. Except as otherwise noted rates are stated in cents per 100 pounds.

North Tonawanda is served by a number of carriers, including the Lehigh Valley, and is directly intermediate between Suspension Bridge or Niagara Falls, N. Y., and Canandaigua over that line. The rate of 12.5 cents is published in respondents' tariff from a group of origin which includes Suspension Bridge and Niagara Falls. As it is proposed to cancel the 12.5-cent rate from North Tonawanda only, leaving that rate in effect from the other points of origin, the proposed cancellation would result in violation of the long-and-short-haul provision of the fourth section of the interstate commerce act.

The commodity rate was first published as an interstate rate effective June 11, 1909. Prior thereto it was restricted to intrastate traffic. It was \$1.26 per net ton until April 30, 1918, and then became \$1.46 per net ton under our order. Pursuant to general order No. 28 of the Director General of Railroads, it was increased to 9 cents, and in the general increases of 1920 became 12.5 cents. The routing specified in connection with this rate is Lehigh Valley to

Elmira, N. Y., 193 miles, and the Pennsylvania beyond, 68 miles, a total of 261 miles. The distance over the lines named via Stanley, N. Y., is about 125 miles. The short-line distance is 86 miles over the New York Central. That line does not publish an interstate commodity rate on lumber, in carloads, from and to these points. The applicable rate over the New York Central is the sixth-class rate of 14.5 cents.

Respondents did not appear at the hearing.

We find that the proposed increase has not been justified. An order will be entered requiring cancellation of the suspended schedule.

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No. 11842.

GENERAL IRON WORKS

v.

DIRECTOR GENERAL, AS AGENT, CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY,
ET AL.

Submitted May 18, 1921. Decided October 31, 1921.

1. Rates on knocked-down iron and steel tanks and secondhand lumber from points in Oklahoma and Texas to points in Louisiana found not unreasonable or otherwise unlawful.
2. Rate on knocked-down iron and steel tanks from Elmwood Place and Ivorydale, Ohio, to Gahagan, La., found unreasonable. Reparation awarded.

E. N. Adams for complainant.

M. G. Roberts for St. Louis-San Francisco Railway Company and Director General, as Agent; *L. M. Hogsett* for Texas & Pacific Railway and receivers; and *J. R. McClurken* for Louisiana & Arkansas Railway Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner.

Complainant, a corporation dealing in knocked-down iron and steel tanks, hereinafter termed tanks, and secondhand lumber used in the oil fields, alleges that the rates on tanks from Jenks and Morris, Okla., Ranger, Tex., and Elmwood Place and Ivorydale, Ohio, to Minden, Fraziers spur, Shreveport, and Gahagan, La., and on secondhand lumber from Jenks and Morris to Shreveport and Minden, between November, 1919, and March, 1920, both inclusive, were unreasonable and unduly prejudicial. We are asked to award reparation. Rates will be stated in cents per 100 pounds, and are those in effect prior to the general increase of 1920, except as otherwise noted.

The fifth-class rate of 87.5 cents was charged on the tanks from the Oklahoma points except on certain shipments originally consigned to Natchitoches, La., on which an additional rate was charged of 34.5 cents, covering reconsignment and back haul to Minden. The latter rate is not here in issue. These fifth-class rates were reduced Febru-

ary 16, 1920, to 80.5 cents from Jenks and 77 cents from Morris, on traffic not moving through Texas west of the Texarkana & Fort Smith.

On November 18, 1919, complainant applied for reduced rates on tanks and lumber from Jenks and Morris to Gahagan and Minden. By freight rate authority No. 21159, dated January 9, 1920, commodity rates of 55 cents on tanks and 29 cents on lumber, in carloads, were made effective February 29, 1920, to expire July 31, 1920. Some shipments moved before this application, and all moved before the effective date of the reduced rates. Complainant seeks reparation to the basis of these reduced rates.

Complainant compared the rates charged from the Oklahoma points with a rate of 45 cents on tanks from Muskogee, Oklahoma City, Sapulpa, Tulsa, and all points in Oklahoma between Hardy and Williams on the Midland Valley to Shreveport and points in the vicinity of Shreveport; with a rate of 50 cents on wrought iron or steel pipe, pipe fittings, brass pipe fittings, brass or bronze valves, steam traps, steam and oil separators, etc., from Bartlesville, Okla., to Shreveport, which also applied from Shreveport to practically all oil-producing centers in Oklahoma; with a rate of 66.5 cents on oil-well supplies in mixed carloads from points in Oklahoma to points in Louisiana; with rates ranging from 35 to 51.5 cents on peanut oil from Oklahoma points to New Orleans, La., and from 46.5 to 52.5 cents on soap, soap powder, etc., from Oklahoma City to Louisiana points; also with a rate of 69 cents on soap, valuation 12 cents per pound or less, from Oklahoma City to New Orleans. Complainant's witness did not know whether there was any movement under these oil and soap rates. The 45-cent rate, which was the basis of the application for the reduced rate from Jenks and Morris, was canceled February 29, 1920, leaving the fifth-class rate applicable.

Fraziers spur, on the Tremont & Gulf, to which some of the shipments of tanks moved, is one of two private sidings about 3 miles from Minden. These two sidings are less than 300 feet apart. During the period covered by the complaint there was no station at Fraziers spur, and a switching charge was collected for the movement from Minden. The two sidings have since been named in the tariffs as Gilark, La. On the shipments of tanks from the Oklahoma points complainant asks for reparation to the basis of the subsequently established rate of 55 cents to Minden and Gahagan, on the ground that rates on tanks are usually blanketed and that all of these points should be in the same group.

The rates charged on the secondhand lumber were 47 cents from Morris to Shreveport, 54 cents from Morris to Minden, and 49 cents from Jenks to Minden. A commodity rate of 29 cents, subsequently established over the route of movement, was in effect in

the opposite direction. Morris and Jenks are not in lumber-producing territories.

Over the route of movement the distance from Ranger to Minden is 347 miles. On the shipments of tanks from Ranger complainant asks for reparation to the basis of a rate of 40 cents, which is the rate for that distance between Shreveport and Texas points. While the 40-cent rate does not apply to Minden, complainant invites attention to the fact that it does apply to points on the Kansas City Southern north of Shreveport. Defendants' witness testified that these points are intermediate to Shreveport over other lines from Texas, and therefore carry the Shreveport rate. Minden is on the Louisiana & Arkansas about 5 miles north of the junction of that line with the V., S. & P. at Sibley. It is near the western boundary of what is known as New Orleans territory and takes New Orleans rates on traffic to and from Texas. Defendants urge that to change the basis of rates applicable from Ranger to Minden under a complaint directed against only one Texas railroad and covering only one point thereon and one Louisiana destination would be improper without a consideration of the rates applicable over many lines which have been reviewed by us in numerous cases.

No oil is produced at Minden. When the shipments moved a new oil field had just been opened at Homer, on the Louisiana & Northwest, in northwestern Louisiana. This line was embargoed, because of heavy movement and poor physical condition during the time these shipments were made. Ordinarily these commodities move from producing points in the east, but inability to get shipments through because of these embargoes compelled the users of oil-well supplies in the Homer field to look elsewhere for materials. Pipe lines were constructed from the Homer field to the Louisiana & Arkansas, and, after a loading rack had been erected, the siding at Fraziers spur was constructed to accommodate cars. A small amount of material comprising these shipments was used at Fraziers spur to take care of the overflow from the pipe lines. Most of the shipments reaching Minden were moved 20 miles over country roads on motor trucks to the Homer field. For a time Minden was embargoed, and then shipments for the Homer field were sent to Shreveport. At Gahagan on the Texas & Pacific only 36 cars of tanks were received from May, 1919, to June, 1920, inclusive. Of these, 7 are included in this complaint. Complainant admitted that the movement was temporary, and at the hearing withdrew its request for rates for the future.

Complainant conceded that many of the shipments were re-signed from other points and moved over circuitous routes. De-

defendants explain that the temporary rates were established in contemplation of movement over direct routes. The movement of two cars from Morris to Gahagan was mentioned by defendants as illustrating the circuitry of the routes used. The short-line distance is 393 miles, but the distances covered were 710 and 762 miles, respectively, because the cars were originally consigned to Burkburnett, Tex., and reconsigned to Gahagan.

Elmwood Place and Ivorydale are near Cincinnati, Ohio. In constructing the rate on tanks from these points to Gahagan the fifth-class differential of 9.5 cents is added to the rate of 75 cents from St. Louis to Gahagan. The rate from St. Louis to Shreveport is 37.5 cents, and the fifth-class rate for 41.8 miles, the distance between Shreveport and Gahagan, is 21.5 cents. The 84.5-cent rate charged exceeded the aggregate of intermediate rates of 68.5 cents. This departure from the aggregate-of-intermediates provision of the fourth section was and is protected by applications which were heard in a separate proceeding not yet determined.

The shipments from Elmwood Place and Ivorydale were originally billed to Shreveport and reconsigned. Complainant refers to a tariff effective December 11, 1920, which provides a rate of 23.5 cents on oil-well supplies moving in interstate traffic between Shreveport and various points in Louisiana for a distance of 46 miles. As rates in this territory were at that time 135 per cent of the rates in effect prior to August 26, 1920, complainant calculates that that rate at the time these shipments moved should have been about 17.5 cents. Oil-well supplies are rated class A, which is higher than fifth class, the rating on tanks. Because of this, complainant urges that instead of adding 21.5 cents to cover the Shreveport-Gahagan factor, a rate somewhat less than 17.5 cents should be added to the rate of 47 cents from the Ohio points to Shreveport in determining the basis for an award of reparation on these shipments.

We find that the rates charged on the shipments of tanks and lumber from the Texas and Oklahoma points were not unreasonable or otherwise unlawful. We further find that the rates charged on the shipments from Elmwood Place and Ivorydale to Gahagan were, are, and for the future will be unreasonable to the extent that they exceeded, exceed, or may exceed the aggregate of contemporaneous intermediate rates; that complainant made the shipments as above described and paid and bore the charges thereon; that it has been damaged in the amount of the difference between the charges paid and those which would have accrued at the rates herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with rule V of the Rules of Practice. No order for the future is necessary.

No. 11780.
CONSOLIDATED COAL COMPANY OF ST. LOUIS
v.
DIRECTOR GENERAL, AS AGENT.

Submitted June 15, 1921. Decided November 8, 1921.

Rate on fine coal, in carloads, from Mount Olive and Staunton, Ill., to Kansas City, Mo., found not unreasonable. Complainant not shown to have been damaged by the alleged undue prejudice. Complaint dismissed.

Stanley B. Houck and W. A. Holley for complainant.

Fred W. Heid, L. H. Strasser, N. S. Brown, and C. N. Richards for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner, and the case was orally argued.

Complainant, a corporation mining coal in the state of Illinois, alleges that the rate charged on 339 carloads of fine coal shipped from Mount Olive and Staunton, Ill., to Kansas City, Mo., during the period from August 21, 1919, to February 6, 1920, was unjust, unreasonable, unjustly discriminatory, and unduly prejudicial; also that the rate was unlawful, unauthorized, and contrary to the provisions of general order No. 28 of the Director General of Railroads. The prayer is for reparation only. Rates will be stated in amounts per net ton.

Mount Olive and Staunton are on the Wabash, within the so-called Springfield group in the state of Illinois. A sketch of this group is shown at page 663 of the report in *The Illinois Coal Cases*, 32 I. C. C., 659. This group also includes coal mines located on the Chicago & Alton, hereinafter referred to as the Alton. The line of the Alton to Kansas City practically parallels that of the Wabash.

The shipments moved over the Wabash direct. Freight charges were collected at the applicable rate of \$1.90.

For many years prior to 1916 the Wabash and the Alton maintained the same rates to Kansas City on coal of all kinds from mines

on their respective lines in the Springfield group. In that year the Alton reduced its rates, establishing a rate of \$1.25 on fine coal and somewhat higher rates on other grades. The Wabash met the rates of the Alton on the larger sizes but declined to meet the \$1.25 rate on fine coal and published a rate of \$1.35 on that grade. This spread of 10 cents between the rates of the two roads on fine coal was maintained through the subsequent rate increases, including that of June 25, 1918, under general order No. 28.

On June 24, 1918, the Alton's rate on fine coal from the Springfield group to Kansas City was \$1.40 and that of the Wabash \$1.50. General order No. 28 contained a provision that where rates on coal between groups had been related differentially the differentials were to be maintained by making the same increase in cents from the related groups as were made in the rate from the highest-rated group in the adjustment. Apparently on the theory that the Springfield group was related differentially to the southern Illinois group, both the Alton and the Wabash, on June 25, 1918, increased the rates mentioned by the amounts authorized in general order No. 28 to apply from the southern Illinois group, resulting in a rate of \$1.85 over the Alton and \$1.95 over the Wabash. On October 5, 1918, the rate over the Alton was reduced to \$1.70, which was the rate of \$1.40 in force on June 24, 1918, increased by the amount authorized in general order No. 28 without regard to any differential relationship. On October 6, 1918, the Wabash rate was reduced to \$1.90 under a freight rate authority having to do with the disposition of fractions. From that time until February 6, 1920, the rates of the Alton and Wabash were \$1.70 and \$1.90, respectively. On the latter date the rate over the Wabash was reduced to \$1.80, thereby restoring the former spread of 10 cents. The delay in making this change in the Wabash rate appears to have been due to doubt as to the proper interpretation of general order No. 28. It was finally decided by a committee of the Railroad Administration that there was no definite relationship between the Springfield and southern Illinois groups on traffic to Kansas City. The shipments covered by this complaint moved during the period when the spread between the rates over the two lines was 20 cents. The claim for reparation is based on the subsequently established rate of \$1.80.

Complainant offered no evidence tending to prove that the rate assailed was intrinsically unreasonable but based its case entirely on the alleged misinterpretation of general order No. 28 and the failure to maintain during the period of these shipments the previously existing relationship between the Wabash and Alton rates. The rate of \$1.90 produced ton-mile earnings of slightly over 6 mills

for a distance of approximately 300 miles. The record does not show that complainant has suffered damage from any undue prejudice which may have resulted from the situation described.

We find that the rate assailed was not unreasonable and that the complainant is not shown to have been damaged by the undue prejudice alleged. The complaint will be dismissed.

64 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 1414.

PACKING REQUIREMENTS, ESTIMATED WEIGHTS, AND
WEIGHING OF EASTBOUND TRANSCONTINENTAL
DECIDUOUS FRESH FRUITS.

Submitted October 13, 1921. Decided November 17, 1921.

Proposed changes in packing requirements, estimated weights, and weighing of eastbound transcontinental shipments of deciduous fresh fruits found not justified. Suspended schedules ordered canceled.

O. W. Dynes for respondents.

C. H. Rodenhaver for National Basket & Fruit Package Manufacturers' Association; *J. C. Folger* for International Apple Shippers' Association, National League of Commission Merchants, and Western Fruit Jobbers' Association; *R. Cumming* for American Fruit & Vegetable Shippers' Association; *Edwin Smith* for Wenatchee Valley Traffic Association; *Fred P. Downing* for Package Sales Corporation; and *O. W. Sandberg* for American Farm Bureau Federation, protestants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND LEWIS.

BY DIVISION 3:

By schedules filed to become effective October 3, 1921, respondents proposed certain changes in their rules and regulations as to packing, estimated weights, and weighing in connection with rates on eastbound transcontinental shipments of deciduous fresh fruits. Upon protests filed by associations of package manufacturers and of shippers of fruit, the operation of the schedules was suspended until January 31, 1922.

The proposed addition of the following paragraph constitutes the most important change:

(g) Specifications for STANDARD RAILROAD CONTAINERS. (See Notes 1 and 2.)

Packages constructed as herein provided, are approved as Standard Railroad Containers for transportation of Deciduous Fresh Fruits. Such containers should be stamped or labeled in type of not less than ¼-inch face, as follows:

"STANDARD RAILROAD CONTAINER"

Shippers must print, write, stamp, or paste on Bills of Lading, the following endorsement:

"This is to certify that articles herein mentioned are packed in "STANDARD RAILROAD CONTAINERS", loaded, braced and stowed in car as required."

----- (Signature).

Note 1.—Dimensions named below for thickness of shook are the minimum except that variations of $\frac{3}{8}$ -inch for sides, tops and bottoms and $\frac{1}{8}$ -inch for ends will be allowed for irregularities in sawing. Containers constructed on the same plan and dimensions of thicker material or with additional nailing, cleats or straps will also be accepted as "Standard Railroad Containers." All shooks used must be sound.

Without quoting the dimensions prescribed for all kinds of fruit packages, those for apples, crab apples, and pears will serve as illustrations. The specified minimum thickness of the shook is: Ends $\frac{3}{4}$ -inch; sides $\frac{5}{16}$ -inch; tops and bottoms $\frac{3}{16}$ -inch; cleats $\frac{3}{8}$ -inch.

Ends for boxes may be one or two pieces each, free from knots that will interfere with nailing. Two-piece ends must be fastened with three (3) corrugated steel joint fasteners. Boxes must be nailed with not less than thirty-two (32) 5d (or larger) cement coated nails.

Note 2.—Nothing herein provided will prohibit the use of containers not conforming to the requirements of Note 1. The provisions of Note 2 will expire March 21, 1922.

No evidence was offered by respondents in justification of the proposed changes. Their counsel read into the record a letter written by the agent of the Transcontinental Freight Bureau, who published the schedules under suspension, reciting some of the changes proposed thereby, and the intention of the carriers. For the purpose of affording shippers an opportunity to use up any box material which failed to meet the new specifications, the proposed changes were not to become effective until March 21, 1922, but inadvertently the date indicated was October 3, 1921. The intention is not to restrict the application of rates published in the tariff to shipments packed in containers conforming to the above requirements, but to provide that if shipments are made in packages not conforming thereto, charges on the irregular packages will be computed on basis of "actual" weight, determined by weighing at least five packages from each lot of the different kinds of fruit in other than standard packages.

The tariff provides estimated weights for the various kinds of fruit based upon their respective general averages. As some species of a particular kind weigh more than others, it follows that some packages with ends slightly under the prescribed thickness, or with one or two nails less than prescribed, though adequate, will under the proposed regulations weigh more than others. Irregular packages of heavier fruit would thus be subjected to a higher charge because of excess over the estimated weight specified in the tariff.

We find that the schedules under suspension have not been justified. An order will be entered requiring their cancellation and discontinuing this proceeding.

No. 11669.

STEWART-WARNER SPEEDOMETER CORPORATION
ET AL.

v.

DIRECTOR GENERAL, AS AGENT, CHICAGO & NORTH
WESTERN RAILWAY COMPANY, ET AL.

Submitted May 20, 1921. Decided October 27, 1921.

Ratings in western classification on speedometers, speedometer heads, and speedometer connections, and rates thereon from Chicago to certain Pacific coast points, found unreasonable. Maximum ratings and rates prescribed. Reparation awarded.

Karl Knox Gartner and Charles Clifford for complainants.

Elmer Westlake, M. A. Cummings, G. H. Baker, L. R. Capron, H. C. Bush, and Robert W. Fyfe for defendants.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS DANIELS, ESCH, AND CAMPBELL.

BY DIVISION 2:

The issues here presented were made the subject of a proposed report by the examiner. Complainants filed exceptions thereto, to which exceptions defendants replied, and the parties were heard in oral argument. We have reached conclusions differing from those proposed by him.

Complainants are Stewart-Warner Speedometer Corporation of Chicago, Ill., and a number of its jobbers and distributors on the Pacific coast. By complaint filed July 24, 1920, they allege that the ratings in western classification territory on speedometers, speedometer heads, and speedometer connections, the commodity rates applied on numerous less-than-carload shipments, and the class rate applied on one carload shipment, during the period from February 7, 1918, to March 20, 1920, both inclusive, from Chicago to San Diego, Los Angeles, Oakland, and San Francisco, Calif., Portland, Oreg., and Seattle, Wash., were unjust, unreasonable, unjustly discriminatory, and unduly prejudicial. We are asked to prescribe reasonable ratings and rates and to award reparation. Rates will be stated in cents per 100 pounds and do not include the general increases of 1920.

A speedometer consists of a head and various connections. The head is a delicate piece of mechanism with a glass dial, hairspring, and so-called jewel bearings. The connections consist of a so-called shaft, of chain or wire coil, inclosed in a flexible steel shaft tube, and a swivel joint, iron clamp, fiber pinion, and gear wheels. Complainants' shipments consisted of speedometers for Ford cars. When shipped complete, these speedometers are each packed in a cardboard carton about 10 by 10 by 4 inches, and weigh 12 pounds. The speedometer heads are packed in smaller cartons about 6 by 6 by 3 inches, weighing 2.5 pounds. The smaller carton and the connections are packed in the larger carton. Many of complainants' shipments consisted of connections only, others of heads only, and the remainder of both heads and connections in varying proportions. The connections when shipped separately are packed in wooden boxes of heavy material. The shipments moved over lines of the defendant carriers and were charged a less-than-carload commodity rate of \$6.69 and a second-class carload rate of \$3.69.

Speedometer heads and connections are classified as follows in the consolidated classification:

Items.	Official Classifi- cation.	Southern Classifi- cation.	Western Classifi- cation.
11 Speed Indicators (speedometers) or Speed Indicator (Speedometer) Heads, in boxes, L. C. L.	1	D-1*	D-1
12 Speed Indicator (speedometer) Connections, consisting of Brackets, Clamps, Gear Wheels, Shafts, Shaft Tubes or Swivel Joints, in boxes, L. C. L.	2	2*	D-1
13 Same as above (items 11 and 12) C. L. Minimum 20,000 lbs., subject to Rule 34	3		2

* Rating applies to any quantity.

The double first-class rate from Chicago to the Pacific coast was \$8.50 and the first-class rate \$4.25.

Speedometers, in less than carloads, have been rated double first-class in western classification since November 1, 1908. In *Stewart & Clark Mfg. Co. v. A., T. & S. F. Ry. Co.*, 26 I. C. C., 361, the predecessor of the principal complainant in this case attacked as unreasonable the rates and rating on speedometers in less than carloads from Chicago to San Francisco and Los Angeles. In that case we said:

The device in question is a complicated and highly finished article. It is somewhat liable to injury in transportation, and the cost of carriage enters but slightly into the price of the article itself. While the rating in question seems to be high, we do not regard it so excessive as to warrant our inter-

ference. Nor are we convinced from the evidence that lower ratings should be provided for the parts which make up the complete instrument.

The testimony in that case has been incorporated in this record.

The speedometer shipped costs \$7.50 f. o. b. factory. The value per pound of the complete speedometer is 62.5 cents, and per cubic foot \$21. Consideration must also be given to the fact that the classification rating assailed applies on all kinds of speedometers, although complainant is interested in the rating as applied to the lowest priced instrument alone. The shafts and shaft tubing weigh about 6 pounds, cost \$1.90, and are shipped in boxes of 100. The swivel joints and clamps weigh 1 pound each, cost \$1.65 and 88 cents, respectively, and are shipped in boxes of 300. The fiber pinion weighs only a few ounces and costs retail 10 cents. The connections used on higher priced speedometers are substantially the same.

First-class rates are applicable to spotlights and electric meters in less than carloads. Speedometer heads are more valuable per 100 pounds than either of these commodities. Break-feed governors are also rated first class. They regulate the speed of trucks and have tubes and connections somewhat similar to those of a speedometer. Meter recording devices are rated one and one-half times first class. Speed indicators for locomotives and motor boats are classified the same as speedometers but probably do not move in as large volume. Clipping machines complete, knocked down, are rated second class. The flexible shaft and tube of a clipping machine are similar to speedometer connections. Defendants recognize that because of the lower value and greater density, a lower rating may properly be applied to speedometer connections than to speedometer heads. They are willing to establish a rating of first class on the latter commodity. Second-class ratings apply in southern and official classification territories.

We find that the rating on complete speedometers and speedometer heads, in carloads, in western classification was not, and is not unreasonable, but that the rates from Chicago to San Diego, Los Angeles, Oakland, San Francisco, Portland, and Seattle, and the classification ratings, assailed, except as above noted, were, are, and will be unreasonable to the extent that they exceeded, exceed, or may exceed class rates contemporaneously maintained from and to the same points and classification ratings as follows: on complete speedometers or speedometer heads, in boxes, in less than carloads, first-class rates and ratings; and on speedometer connections, consisting of brackets, clamps, gear wheels, shafts, shaft tubes, or swivel joints, in boxes, in less than carloads, second-class rates and ratings, and in carloads, third-class rates and ratings. We further find that

the L. G. Reno Company, the Chanslor & Lyon Company, and the Weinstock-Nichols Company, corporations, and W. F. Rudolph, H. A. Ungar, I. D. Watson, and W. D. Harris, made shipments as described, and paid and bore the charges thereon at the rates herein found unreasonable; that they have been damaged in the amount of the difference between the charges paid and those that would have accrued at the rates herein found reasonable; and that they are entitled to reparation, with interest. They should comply with rule V of the Rules of Practice. Affidavits offered in evidence by other complainants to show that they made shipments and paid and bore the charges thereon were objected to by defendants upon the ground that they were not accorded the right of cross-examination. Upon this record reparation is denied those complainants.

An appropriate order for the future will be entered.

64 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 1374.

ESTIMATED WEIGHT ON PETROLEUM CRUDE OIL
FROM TEXAS.

Submitted September 12, 1921. Decided November 17, 1921.

Proposed increase in estimated weight of petroleum crude oil, in tank-car loads, from Texas to interstate points, found not justified. Suspended schedules ordered canceled.

No appearance for respondents.

C. D. Chamberlin and *F. G. Stadle* for protestants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND LEWIS.

BY DIVISION 3:

By schedules filed to become effective August 10, 1921, respondents proposed to increase the estimated weight of petroleum crude oil, in tank-car loads, from Texas to interstate points, from 6.6 to 7.4 pounds per wine gallon. Upon protest the schedules were suspended until January 7, 1922.

The basis of 6.6 pounds per gallon as the estimated weight of petroleum crude oil, in so far as traffic east of the Mississippi River is concerned, has been in effect for a number of years on all lines from the midcontinent field except the Baltimore & Ohio Southwestern, which publishes the 7.4-pound basis. The establishment of the present basis was the result of investigations conducted by the carriers and representatives of the petroleum industry some 10 years ago. The proposed change would apply over all lines from Texas producing points but would not change the existing weight basis from producing points in Kansas and Oklahoma. It would result in an increase of approximately 12 per cent in the freight charges on crude petroleum from Texas points to destinations east of the Mississippi River.

Respondents did not appear at the hearing.

Protestants state that the proposed increased charges would be disastrous to Texas producers and shippers.

We find that the proposed increase in estimated weight has not been justified. An order will be entered requiring cancellation of the suspended schedules and discontinuing this proceeding.

INVESTIGATION AND SUSPENSION DOCKET No. 1357.

APPLICATION OF RATE AND MINIMUM WEIGHT ON
LIVE STOCK IN MIXED CARLOADS.

Submitted November 16, 1921. Decided November 25, 1921.

Proposal of the carriers to make the rule providing the basis of charges on shipments of live stock in mixed carloads read "the highest rate and highest minimum weight" instead of "the highest rate and minimum weight," held to be justified.

J. W. Terry, T. J. Norton, F. E. Andrews, and G. B. Ross for respondents.

S. H. Cowan, B. D. Pelton, A. H. Priest, and C. R. Marshall for protestants.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS DANIELS, ESCH, AND CAMPBELL.

DANIELS, *Commissioner*:

By supplement 1 to agent Leland's tariff I. C. C. 1450, page 4, item 55-A, filed to become effective July 10, 1921, and supplement 2 to the same tariff, page 5, item 55-B, filed to become effective August 10, 1921, both of which are under suspension until December 7, 1921, it is proposed to change the rule governing the transportation of live stock in mixed carloads by the insertion of the words shown in brackets in the following reproduction of the present rule:

Live Stock may be shipped in mixed carloads at the highest rate and [highest] minimum weight applicable on any of the species in straight carloads [(see example)] under the following rules:

[Example: Where Hog rate is higher and Hog minimum weight lower than Cattle, a mixed carload of Cattle and Hogs would be subject to the Hog rate and Cattle minimum weight.]

Respondents urge that the phrase "highest rate and minimum weight" means the highest rate and highest minimum weight, and that the proposed rule therefore makes no material change in the present rule. We think this contention is sound. Under this interpretation the rule provides, in effect, for charges at the highest rate, and at the highest minimum weight, thereby making the basis of charge definite and certain. So construed, the rule effectuates our tariff regulations concerning definiteness and certainty in the publication of rates. Interpreted otherwise, the rule would provide, in

effect, for charges at the highest rate, and at the minimum weight applicable to any of the species in the car, without designating which minimum. Doubtless the carrier would insist on the minimum productive of the highest, and the shipper the minimum productive of the lowest, charge per car. The requirement as to certainty might be met by the addition of a clause making the choice of minimum dependent upon the lowest or the highest charge per car, but the rule contains no such clause, nor do the tariffs anywhere else so specify.

Respondents present testimony of a general nature purporting to show that the service on mixed carload shipments of live stock of different species is greater than on straight carload shipments of the respective stock. They also refer to the fact that this rule for live stock is substantially the same as the rule in the consolidated classification for general freight. Protestants introduce data relating to claims on straight and mixed carload shipments of live stock of certain shippers over a given period. The record is not as comprehensive as it should be for the determination of the reasonableness of a rule of such importance and wide application as the one under consideration. The issue of reasonableness of the rule, in its application to mixed carload shipments of cattle and calves, which comprise by far the greater volume of mixed carload shipments affected by the rule, is directly before us in Docket No. 12460, *Oklahoma National Live Stock Exchange v. Director General*, and in Docket No. 12757, *Texas Livestock Shippers' Protective League v. Director General*. The reasonableness of a rule to the same general effect, in its application to mixed carload shipments of all kinds of live stock, is before us in Docket No. 11699, *National Live Stock Exchange v. A., T. & S. F. Ry. Co.* We therefore refrain here from passing on that matter. The disposition of this case is wholly without prejudice to, or bearing on, the intrinsic reasonableness of the rule as applied to mixed carload shipments of live stock.

We find that respondents have justified the proposed change in the wording of this rule, and the order of suspension will be vacated.

No. 11982.

A. & C. MILL COMPANY ET AL.

v.

DIRECTOR GENERAL, AS AGENT, ABERDEEN & ROCK-
FISH RAILROAD COMPANY, ET AL.

Submitted August 29, 1921. Decided November 14, 1921.

Rates on cedar shingles, in carloads, from points in the coast group in Oregon, Washington, and British Columbia to destinations in other states and Canada found not unreasonable, unjustly discriminatory, or unduly prejudicial, except that to certain points in Oklahoma and Texas they are found unreasonable. Reparation awarded and reasonable basis of rates prescribed to Oklahoma and Texas.

S. J. Wettrick for complainants.

Charles A. Hart, Thomas M. Woodward, R. J. Hagman, D. F. Lyons, and B. W. Scandrett for defendants.

Rogers MacVeagh for West Coast Lumbermen's Association, intervenor.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS DANIELS, ESCH, AND CAMPBELL.

Esch, Commissioner:

Exceptions were filed by complainants and defendants to the report proposed by the examiner.

The shingle industry of the Pacific northwest, by complaint filed September 14, 1920, assails as unreasonable, unjustly discriminatory, and unduly prejudicial, the carload rates on cedar shingles from points in the so-called coast group in Oregon, Washington, and British Columbia, west of the Cascade Mountains, to destinations in practically all other states and Canada. Proper rates for the future are asked, together with reparation on all shipments moving within the statutory period. Rates are stated per 100 pounds.

The rates on cedar shingles from the territory in question are generally 13.5 cents higher than on various kinds of lumber, other than cedar, namely, fir, cottonwood, hemlock, larch, pine, and spruce, herein referred to as common lumber, and complainants contend that this differential should be removed by reducing the rates on cedar

shingles. Prior to 1893 the rates on cedar shingles and also cedar lumber were the same as on other kinds of lumber, but in 1893 reductions of 15 cents on common lumber and 5 cents on cedar shingles and cedar lumber, made to develop the industry and to stimulate the eastbound movement, resulted in a 10-cent differential against the cedar products, which continued until the general increases of 1920 became effective, resulting in the present differential of 13.5 cents. The reason given for the greater reduction on common lumber than on cedar shingles and lumber in 1893 is that the competition in the east between common lumber, particularly fir, from the west and pine from the south was a matter of serious consequence, while cedar shingles and lumber meet little or no competition from other sections.

Shingles made from fir are accorded the same rates as fir lumber, but the production of such shingles is inconsequential. For all practical purposes, particularly so far as this case is concerned, cedar shingles may be regarded as the only kind shipped from the Pacific northwest and as the only important cedar product. Complainants accordingly contend that, stated simply, the question presented is whether shingles should be charged a higher rate than lumber in general. Attention is called to *Rates on Lumber and Lumber Products*, 52 I. C. C., 598, where we held that shingles should take the same rates as lumber. Cedar shingles do take the same rates as cedar lumber, but higher rates than lumber other than cedar.

Complainants urge that in the interest of simplicity and uniformity shingles and lumber should take the same rates. The maintenance of higher rates on cedar shingles than on various kinds of lumber other than cedar is the policy only of the lines west of Minnesota Transfer and the Missouri River cities. Locally in the north Pacific coast territory no differential is observed. The carriers east of Minnesota Transfer and the Missouri River cities make no distinction between shingles and lumber, but as the through rates are based on the rates to and from those gateways the differential of the western lines is reflected in the through rates. As evidence of unreasonableness, complainants refer to the fact that only the lines west of Minnesota Transfer and the Missouri River observe the differential. However, the movement of shingles is not nearly so great from other territories as it is from the Pacific northwest, and the matter of a differential or a specific rate for shingles is not of importance except from the Pacific northwest. The record indicates that this territory produces over 90 per cent of the shingles made in the United States.

Cedar shingles are used to some extent in competition with cypress shingles from the south and redwood shingles from California, and there is a limited competition between shingles and lumber in general, as siding for houses. The principal competition, however, is with the

so-called patent or prepared roofing materials manufactured in the east. In this connection the record shows that the production of such roofing in the United States has greatly increased in recent years while the opposite is true as to shingles. To simplify the statistics 100-foot squares are taken as the unit. In 1908 the production was 8.2 million squares of patent roofing, while in 1919 it was 30.6 million. The greatest year for shingles was 1909, when 10.4 million squares were produced, as compared with 7.4 million in 1919. The principal market for shingles and other roofing materials, of course, is in the east, and since the patent roofings are manufactured in the east the hauls thereon to most of the important points of consumption are comparatively short and the rates lower than on shingles from the north Pacific coast.

The 10-cent differential on shingles was approved in *Pacific Coast Mfrs. Asso. v. N. P. Ry. Co.*, 16 I. C. C., 465, June, 1909, and it was stated in that report that shingles from the north Pacific coast met but little active competition. Complainants contend that the above figures indicate that the situation has since changed and that there is now good reason for eliminating the differential. On March 31, 1921, which was after the complaint in the instant case was filed, there was a general reduction of 7 cents in the rates on shingles and other lumber products from the north Pacific coast to the east. The reduction on lumber was made to assist the producers of the Pacific northwest in meeting the competition of lumber from the south. The reduction on shingles was mainly for the purpose of preserving the 13.5-cent differential.

Except for the fact that shingles do not load as heavily as lumber, shingles and lumber move under substantially similar circumstances and conditions. Lumber can be loaded in or on almost any kind of a car, but often requires flat cars, for which it is often difficult to find loading westbound. Shingles require closed cars, but the smaller and older cars are often utilized.

In view of the fact that shingles do not load as heavily as the various kinds of lumber on which lower rates apply, the differential against them is regarded by defendants as necessary to produce reasonable earnings per car. There are wide differences in the loading possibilities of the various articles taking lumber rates, and some may load no more heavily than shingles, but it is clear that as a general proposition lumber loads more heavily. The most important lumber that moves from the territory in question at the lower rates referred to is fir. The average loading in box cars appears to be well over 63,000 pounds, but a large part of the traffic moves on flat cars, which are often loaded much more heavily than box cars; the average loading of cedar shingles is considerably less than 37,000

pounds. In other words, if both commodities were given the same rates it would require nearly two carloads of shingles to earn the revenue that would be derived from one carload of fir lumber. Moreover, the preponderant empty-car movement is westbound; about one-half the westbound movement of cars is empties. Defendants must haul two empties westbound to secure a tonnage of shingles not much in excess of the weight of a single car of lumber. Even under the present rates the car earnings are much greater on fir lumber than on cedar shingles.

On the basis of 1920 tonnage the reductions sought would cost the carriers about \$1,250,000 per year.

As above stated, prior to August 26, 1920, the date of the general increases, the usual differential against cedar shingles was 10 cents, and 13.5 cents after that date. However, to some points in Oklahoma and Texas the differentials prior and subsequent to the date named were as high as 18.5 cents and 24.5 cents, respectively. In a few instances they were even greater. The complaint asks reparation on all shipments which moved within the statutory period preceding the filing of the complaint, but the prayer was subsequently withdrawn except as to shipments on which the differentials exceeded 10 cents prior to August 26, 1920, and 13.5 cents thereafter. Complainants compare the rates in effect prior to June 25, 1918, on cedar shingles from the north Pacific coast to Texas and Oklahoma points with the rates to Chicago, Ill., and St. Louis, Mo., prescribed as reasonable in *West Coast Lumbermen's Asso. v. A. & W. Ry. Co.*, 44 I. C. C., 443. To all of these rates there have been added the general increases made by the Director General of Railroads and those authorized by us in 1920. The comparison referred to appears in the table below:

North coast to—	Distance, ¹	Rate.	Revenue per ton-mile.	Rate based on 10 cents over lumber rates. ²	Revenue per ton-mile based on 10 cents over lumber rates.
	Miles.	Cents.	Mills.	Cents.	Mills.
Amarillo, Tex.	1,965	78	7.9	73.5	7.5
Wichita Falls, Tex.	2,188	82	7.5	73.5	6.7
Sherman, Tex.	2,308	82	7.1	73.5	6.4
Fort Worth, Tex.	2,301	82	7.1	73.5	6.4
Dallas, Tex.	2,332	82	7	73.5	6.3
San Antonio, Tex.	2,557	82	6.4	73.5	5.7
Houston, Tex.	2,578	82	6.3	73.5	5.7
Oklahoma City, Okla.	2,253	76.5	6.7	73.5	6.1
Chicago, Ill.	2,228	65	5.8	65	5.1
St. Louis, Mo.	2,236	65	5.8	65	5.1

¹ Distances shown are averages from Seattle, Wash., and Portland, Oreg.

² These are constructive rates (except to Chicago and St. Louis) made by applying the same arbitrary on shingles over the lumber rates to Texas and Oklahoma as applied over the lumber rates to Chicago and St. Louis.

Until 1914 the differential on cedar lumber and shingles over common lumber to Texas and Oklahoma was 10 cents, the same as to eastern destinations. In 1914, the Chicago, Rock Island & Gulf, at the solicitation of a Fort Worth silo manufacturer, and upon the expectation of increased tonnage, agreed to reduce the rate on common lumber from the north coast to Fort Worth from 72 cents to 63.5 cents. This action, while not agreeable to the other lines, eventually forced a general reduction in the rates on common lumber to points in Texas and Oklahoma. These reductions, however, did not result in an increased movement to Texas and Oklahoma, and in 1916 the carriers sought to restore the lumber rates to the basis in effect prior to the reduction in 1914, but that was found not justified in *Pacific Coast-Southwest Lumber*, 40 I. C. C., 387. The reduction in the common-lumber rates, which occurred in 1914, was not accompanied by a similar reduction in the rates on cedar shingles and lumber. This accounts for the fact that the present differential on cedar shingles and lumber to most points in Texas and Oklahoma is more than 13.5 cents. The present rates on common lumber to Oklahoma and Texas points are those considered in the case last cited and increases in which were found not justified, plus the general increases thereafter made.

In *West Coast Lumbermen's Asso. v. A. & W. Ry. Co.*, *supra*, we found that increased rates on cedar shingles from the north Pacific coast to Chicago, St. Louis, and points in Illinois, Indiana, Iowa, Michigan, Missouri, and Wisconsin, which exceeded the rates on common lumber by more than 10 cents, had not been justified and fixed reasonable maximum rates, which were 10 cents higher than the rates on common lumber, upon which basis reparation was awarded.

The record establishes, and we find, that the rates assailed are not unreasonable, unjustly discriminatory, or unduly prejudicial, except to points in Oklahoma and Texas to which we find they were unreasonable to the extent that they exceeded the rates on common lumber by more than 10 cents per 100 pounds prior to August 26, 1920, and by more than 13.5 cents per 100 pounds after that date, which latter basis is also found reasonable to points in Oklahoma and Texas for the present and future. We further find that complainants made shipments to points in Oklahoma and Texas within the statutory period and paid and bore the charges thereon; that they have been damaged in the amount of the difference between the charges paid and those that would have accrued at the rates herein found reasonable; and that they are entitled to reparation, with interest. Complainants should comply with rule V of the Rules of Practice.

An appropriate order will be entered for the future.

No. 11662.

CHARLESTON, S. C., MINING AND MANUFACTURING
COMPANY

v.

DIRECTOR GENERAL, AS AGENT.

Submitted July 27, 1921. Decided November 26, 1921.

Rates charged on coal, in carloads, from points in Virginia and Kentucky to Charleston Mining and Manufacturing Co., Fla., found legally applicable. Complaint dismissed.

Charles E. Cotterill for complainant.

John F. Finerty, Alex. M. Bull, and Paul P. Hastings for defendant.

REPORT OF THE COMMISSION.

DIVISION 4, COMMISSIONERS MEYER, EASTMAN, AND POTTER.

BY DIVISION 4:

Exceptions were filed by complainant to the report proposed by the examiner, and the case was orally argued before us.

Complainant, a corporation operating a phosphate rock mine at Charleston Mining and Manufacturing Co., Fla., alleges that the rates charged by defendant on 28 carloads of coal shipped between August 23, 1918, and November 25, 1919, inclusive, from Keokee, St. Charles, Arno, Exeter, and Dante, Va., and Elkhorn City, Ky., to Charleston Mining and Manufacturing Co., were illegal. The prayer is for reparation. Rates will be stated in amounts per ton of 2,000 pounds.

The shipments moved through Jacksonville, Fla., and charges were collected at combination rates of \$4.75 from Elkhorn City and \$4.65 from the other points of origin, composed of \$3.05 and \$2.95, respectively, to Jacksonville, and \$1.70 beyond.

Prior to June 25, 1918, the rates to Jacksonville were \$2.60 and \$2.50, respectively, published in tariffs of the Carolina, Clinchfield & Ohio and the Southern. Contemporaneously a rate of \$1.25 was published in L. E. Chalenor's tariff I. C. C. A-163, as a basing rate applicable beyond Jacksonville on coal from Virginia and Kentucky mines. On June 25, 1918, the tariffs of the Carolina, Clinchfield and Ohio and

the Southern were reissued and the rates therein named from the points of origin to Jacksonville included increases authorized under general order No. 28 of the Director General of Railroads. On the same date, the basing rate applicable from Jacksonville to destination was increased so as to make effective the increases authorized under general order No. 28. That order authorized increases in the rates on coal in specific amounts of 55 cents where the rates were \$2.50 and \$2.60, 45 cents where the rate was \$1.25, and 65 cents where the rates were \$3.75 and \$3.85.

The Chalenor basing tariff specifically provided that the Jacksonville combination would be the legal rates from Virginia and Kentucky coal mines and other interstate points to Charleston Mining and Manufacturing Co., under the following provision:

Item 12: In the absence of specific rates, through Interstate rates between interior Florida points shown herein and all points in the United States and Canada will be made by adding to the basing rates herein shown to and from Jacksonville, Fla. * * *, the published interstate rates lawfully on file with the Interstate Commerce Commission up to or beyond Jacksonville, Fla. * * *, and the resulting totals are equivalent to through rates from the original shipping points to the final destinations via the routes specified * * *.

Complainant contends that under this provision the rates to and from Jacksonville were in effect through rates and that the increases authorized by general order No. 28 should have been added to the total rate instead of being added to each separate factor thereof. On September 1, 1919, joint rates were published from and to the points in question 50 cents higher than the Jacksonville combination prior to June 25, 1918. The above-quoted rule in the basing tariff simply prescribes a method of constructing through rates between the points in question; and the measure of the resulting through rates might vary with changes in the individual factors.

We find that the rates charged were legally applicable. The complaint will be dismissed.

No. 11876.
IDEAL FUEL COMPANY, INCORPORATED,
v.
DIRECTOR GENERAL, AS AGENT.

Submitted July 25, 1921. Decided November 26, 1921.

Rate on coal, in carloads, from Herrin, Ill., to Chicago, Ill., during federal control, found not unreasonable. Complaint dismissed.

George P. Boyle for complainant.

John F. Finerty, Thomas M. Woodward, and Fred W. Heid for defendant.

REPORT OF THE COMMISSION.

DIVISION 4, COMMISSIONERS MEYER, EASTMAN, AND POTTER.

BY DIVISION 4:

Exceptions were filed by defendant to the report proposed by the examiner, and the case was orally argued before us. We have reached conclusions differing from those proposed by the examiner.

Complainant, a corporation, alleges that the rate of \$2.30 per ton charged for the transportation of nine carloads of coal from Herrin, Ill., to Chicago, Ill., during August, 1918, was unreasonable to the extent that it exceeded \$1.60. The prayer is for reparation. Rates are stated in amounts per ton.

Herrin is in the so-called southern Illinois coal field, 312 miles from complainant's yard, which is on the rails of the Chicago & Eastern Illinois in Chicago. The shipments moved from Herrin over the Illinois Central to a point of interchange near Chicago, thence over the Chicago & Eastern Illinois to complainant's yard.

At the time of movement there were two rates to Chicago from Herrin; the flat Chicago rate of \$1.60 including delivery in Chicago, and a proportional rate of \$1.50 to a point of interchange near Chicago. Charges on complainant's shipments were properly collected at the proportional rate, plus 80 cents for the movement over the Chicago & Eastern Illinois. On December 31, 1919, the \$1.60 rate was made applicable from Herrin to complainant's yard.

Herrin is served by the Missouri Pacific; Chicago, Burlington & Quincy; and Illinois Central. The latter two reach Chicago direct. The Illinois Central applied the flat Chicago rate of \$1.60 from Herrin to numerous industries in the Chicago switching district on

roads other than the Chicago & Eastern Illinois, for distances greater than that from Herrin to complainant's yard. The movement to such industries also required an interchange near Chicago between the originating and delivering carriers. The \$1.60 rate was applicable from the southern Illinois coal field, including Herrin, to 200 industries on the Chicago, Burlington & Quincy in Chicago. The flat Chicago rate from the central Illinois field, which was 24 cents under the rate from the southern field, applied over various lines to deliveries in Chicago on the Chicago & Eastern Illinois.

Defendant submitted comparisons of rates on coal from various points in Illinois to destinations in Iowa, Missouri, and Kansas, considerably higher for approximately the same or lesser distances. The rate assailed also compares favorably with rates from mines in eastern Kentucky, West Virginia, Ohio, and Pennsylvania to destinations in central territory for comparable distances.

The rate assailed yielded ton-mile earnings of 7.4 mills. A rate of \$1.60 would yield 5.1 mills.

We find that the rate assailed was not unreasonable. The complaint will be dismissed.

No. 12010.¹

TRIBUNE, INCORPORATED, ET AL.

v.

BUTTE, ANACONDA & PACIFIC RAILWAY COMPANY,
DIRECTOR GENERAL, AS AGENT, ET AL.

Submitted September 5, 1921. Decided November 25, 1921.

1. Rates on newsprint paper, in carloads, from points in Oregon and Washington to destinations in Montana found not unreasonable or unduly prejudicial. Complaint dismissed.
2. Maintenance of rates on newsprint paper, in carloads, from points in the Portland, Oreg., group to Denver, Colo., lower than to Billings, Mont., and other intermediate points in contravention of the long-and-short-haul rule of section 4 of the act not justified. Fourth section relief denied.

J. W. Goodman for complainants.

F. G. Dorety, R. J. Hagman, and Thomas M. Woodward for defendants.

H. W. Prickett for Salt Lake City and Ogden newspaper interests, interveners.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

CAMPBELL, *Commissioner*:

No exceptions were filed to the report proposed by the examiner.

Complainant corporations, newspaper publishers in the principal cities of Montana, allege that the rates on newsprint paper, in carloads, from producing points in Oregon and Washington to certain Montana points were and are unreasonable, unjustly discriminatory, and unduly prejudicial, and in some instances violative of the long-and-short-haul rule of section 4 of the interstate commerce act. Reparation on shipments made since December 1, 1916, and the establishment of proper rates for the future are asked. The Western Newspaper Union, a jobber of newsprint paper, intervened at the hearing and asks the same relief. Rates are stated in cents per 100 pounds, unless otherwise noted.

¹ This report also embraces Fourth Section Application No. 349 to the extent indicated in the body of the report.

All items of cost in producing a newspaper have increased greatly during the past few years but advertising and subscription rates also have been increased. The paper represents about 17 per cent of the cost of producing a newspaper. The average freight rate to Montana points is about one-sixth of the value of the paper. Complainants in the past have drawn some of their newsprint paper from International Falls, Minn., on the Canadian boundary north-west of Duluth, but expect to secure most of their future supply from the Oregon and Washington points involved. The principal points of origin are Millwood, Wash., near Spokane, and Oregon City, Oreg., near Portland. Other producing points are located near by and in the same rate groups. The destination points are Anaconda, Butte, Helena, Great Falls, Lewistown, and Billings. The principal movements are from Millwood and over the lines of the Northern Pacific, Great Northern, and Chicago, Milwaukee & St. Paul, respectively.

Complainants distribute their newspapers throughout Montana and also reach into Idaho and Wyoming, competing to some extent with publishers at Salt Lake City and Ogden, Utah, and Denver, Colo. These points are accorded relatively lower rates from the Oregon and Washington points than the Montana points. Complainants contend that they are subjected to undue prejudice on the ground that all the publishers draw most of their paper from the same source and any rate preference enjoyed by Salt Lake City, Ogden, and Denver publishers enables such interests to apply their savings in freight charges to producing more attractive newspapers, increasing their circulation, reducing their advertising rates, and perhaps by quantity production to operate more economically, all of which is said to be detrimental to complainants' business. The present rates to the Montana points, together with those sought, and the rates to Salt Lake City, Ogden, and Denver are shown below:

To—	From Portland group (Oregon City).		From Spokane group (Millwood).	
	Present rate.	Rate sought.	Present rate.	Rate sought.
	Cents.	Cents.	Cents.	Cents.
Anaconda.....	94	65	67.5	50
Butte.....				
Helena.....				
Great Falls.....				
Billings.....				
Lewistown.....	117.5	75	87.5	66.5
Salt Lake City.....	117.5	72	87.5	62.5
Ogden.....	70.5	.....	70.5	.....
Denver.....	94	.....	94	.....

At the hearing certain newspaper publishers at Salt Lake City and Ogden intervened and offered much evidence to the effect that the rates from the producing points in question to Salt Lake City and Ogden are not unreasonably low. It is their view that the rates on newsprint paper should be closely related to the rates on lumber and pulp wood, and that the present rates to Salt Lake City and Ogden, if so tested, are found reasonably high. The rate on newsprint paper from the Portland group to these Utah points is 70.5 cents and represents a rate of 45 cents, plus the two 25 per cent increases which have been made since June 24, 1918. The 45-cent rate from the Portland group was made effective March 1, 1912, and its purpose, in part at least, was to meet the rate from Floriston, Calif., to Salt Lake City, and Ogden, and in accordance with a recognized formula, was based on 75 per cent of the 60-cent rate on newsprint paper from the Missouri River to Salt Lake City prescribed by us as reasonable in *Commercial Club, Salt Lake City, v. A., T. & S. F. Ry. Co.*, 19 I. C. C., 218. The same rate was published from the Spokane group to Salt Lake City and Ogden to keep the paper mills on a parity. The distances from the two origin groups are about equal. The 70.5-cent rate, for the average haul of about 885 miles, yields average earnings of over \$360 per car, approximately 40 cents per car-mile, and nearly 16 mills per ton-mile, and the Salt Lake interests regard it as high, especially in comparison with a rate of 65.5 cents on roofing and building felt from Oregon and Washington points to Salt Lake City and Ogden and in comparison with the rates on newsprint paper from and to various other points ranging from 34 cents to 70.5 cents for distances of from 689 to 1,360 miles.

The defense of the carriers to complainants' allegation of undue prejudice is that the principal lines to the Montana points do not control and are not responsible for the lower rates to Salt Lake City, Ogden, and Denver. The record supports them. The rates to those points were fixed by the Union Pacific system, which is the direct route.

The rate from the Portland group to Denver, which is lower than to Billings and other Montana points, applies via Billings and other intermediate points. Fourth section application No. 349, so far as it seeks authority for the continued maintenance of this relationship, was assigned for hearing with this complaint. The distance from Portland to Billings over the Spokane, Portland & Seattle and the Northern Pacific is 1,091 miles and over the Spokane, Portland & Seattle and the Great Northern 1,138 miles. The short-line distance from Portland to Denver is over the lines of the Union Pacific system, 1,375 miles. Via Billings it is 1,645 miles over the Northern Pacific and its connections and 1,792 miles over the Great

Northern and its connections. The rate via the longer routes was made to meet the rate via the short route. The act as now amended requires us to deny authority for departures from the long-and-short-haul rule as to Billings, because the distance is less than to Denver via the short line. While the distances over the circuitous routes to Denver are more than 20 per cent greater than over the direct route, no good reason appears for continuing these departures at any point between Billings and Denver. Defendants' pending application accordingly is denied.

From June 25, 1918, until September 4, 1919, a rate of 84 cents applied from Portland to Anaconda, Butte, Helena, and Great Falls, while a rate of 75 cents applied to Denver. This departure from the long-and-short-haul rule was also covered by the fourth section application referred to, but was subsequently corrected by reducing the rate to the Montana points to 75 cents, the Denver basis. At present the rates to these points conform to the long-and-short-haul rule and there is no proof as to the amount of damage that may have been suffered by complainants while the disparity existed.

In support of their contention that the rates are unreasonable complainants rely mainly on the relatively lower rates to Salt Lake City, Ogden, and Denver. The rates to these points, as already stated, were fixed not by defendants but by the Union Pacific system. They, however, regard them as reasonable for measuring the rates to Montana points over defendants' lines, mainly because of the similarity in transportation conditions and because the ton-mile earnings from all traffic are substantially the same on all the principal lines serving the northwest. Complainants contend that the rates to Denver are reasonable even for the hauls over defendants' lines which are much longer than over the lines of the Union Pacific system, and urge that they be used as the basis for downward grading to arrive at proper rates to Montana points over defendants' lines.

The following table shows the routes over which the shipments may move from Portland, together with the distances, the rates sought by complainants, and the ton-mile earnings. Several of the routes are probably not in general use because of their circuitry. The same information is shown as to the rates to Salt Lake City and Denver for comparative purposes, present rates being here used.

Portland to—	Route.	Distance.	Rate.	Ton-mile earnings.
		<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>
Anaconda.....	O. W. R. & N.-C. M. St. P.-B. A. & P.	756	65	18.52
Do.....	S. P. & S.-N. P.-B. A. & P.	693	65	18.75
Do.....	S. P. & S.-G. N.-B. A. & P.	1,101	65	11.81
Butte.....	S. P. & S.-N. P.	748	65	17.38
Do.....	S. P. & S.-G. N.	1,075	65	12.09
Do.....	O. W. R. & N.-C. M. St. P.	667	65	19.49

Portland to—	Route.	Distance.	Rate.	Ton-mile earnings.
Helena.....	S. P. & S.-N. P.....	751	65	17.31
Do.....	S. P. & S.-G. N.....	1,003	65	12.96
Great Falls.....	do.....	904	65	14.38
Lewistown.....	O. W. R. & N.-C. M. St. P.....	1,017	72	14.16
Do.....	S. P. & S.-G. N.....	1,024	72	14.06
Billings.....	S. P. & S.-N. P.....	1,091	75	13.75
Do.....	S. P. & S.-G. N.....	1,138	75	13.18
Salt Lake City.....	O. W. R. & N.-O. S. L.....	851	70.5	16.52
Denver.....	O. W. R. & N.-O. S. L.-U. P.....	1,375	94	13.6
Do.....	S. P. & S.-N. P.-C. B. & Q.....	1,645	94	11.42
Do.....	S. P. & S.-G. N.-C. B. & Q.....	1,792	94	10.43
Average to Montana points.....		921	67.5	15.22

Similar data appear of record with respect to Millwood, a point of origin in the Spokane group. The average distance from Millwood to the Montana destinations shown above is 559 miles, the average rate 54.5 cents per 100 pounds, and the average ton-mile earnings 20.73 mills.

Newsprint paper is a comparatively low-grade commodity, being in the main only chemically disintegrated wood pulp rolled into sheets. The price during the past five years has ranged from less than 2 cents to as much as 7.9 cents per pound. Prices are falling and at present are somewhat below the peak. It loads to above 50,000 pounds per car; loss and damage claims are inconsequential and the movement is not sporadic. It is desirable traffic for the carriers.

In *Crown Willamette Paper Co. v. S., P. & S. Ry. Co.*, 49 I. C. C., 635, decided April 20, 1918, we found that the rates on newsprint and other kinds of paper in carloads from Camas, Wash., in the Portland group, to points in Montana, including those involved herein, were not unreasonable or unduly prejudicial. The rate to Anaconda, Butte, Helena, and Great Falls at that time was 67 cents. As a result of general order No. 28 of the Director General of Railroads it was increased to 84 cents, but subsequently reduced to 75 cents, the Denver basis. The present rate is 94 cents, but had the full increases made since June 25, 1918, been retained the present rate would be \$1.05. Defendants therefore contend that as the Commission practically has approved a rate of \$1.05, it can not fairly in this case reduce the present rate without abundant evidence of unreasonableness.

Prior to the general increases of August, 1920, the rates from the Portland group to most of the Montana points were the same as from International Falls and other points in Minnesota, but because at that time a 25 per cent increase was applied to the rates from the Portland group and a 35 per cent increase to the rates from the Minnesota points, the rates from the Portland group, except to Billings and Lewistown, are considerably lower than from the Minnesota

points. The distances generally are shorter from the Portland group, but the operating conditions are less favorable and the traffic is less dense than from the Minnesota points. Moreover, the predominating empty-car movement is westbound and might be a justification for lower rates westbound than eastbound. Most of complainants' paper comes from Millwood, several hundred miles nearer than the Portland group, and moves at rates that are much lower than apply from either the Portland group or the Minnesota points, and the indications of record are that most of complainants' future supply of paper will come from Millwood or other points in the Spokane group.

Defendants show that the rates assailed compare favorably with rates from and to points in the same general territories of origin and destination on such commodities as canned goods, rice, beans, peas, coffee, dried fish, etc. Some of these commodities move in considerable volume while others do not. All are rated fifth class in western classification, the same as newsprint paper.

We find that the allegations of the complaint have not been sustained. Appropriate orders will be entered.

64 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 1373.

LUMBER TO SELMA, ALA., FROM ALABAMA & NORTH
WESTERN R. R.

Submitted September 17, 1921. Decided November 28, 1921.

Proposed increased interstate rate on lumber and articles taking lumber rates, in carloads, from points on the Alabama & North Western to Selma, Ala., found not justified. Suspended schedules ordered canceled.

No appearance for respondents.

O. L. Bunn for protestants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

By DIVISION 3:

By schedules filed to become effective August 10, 1921, respondents proposed to cancel their joint rate of 11.5 cents on lumber and articles taking lumber rates, in carloads, from points in Alabama on the Alabama & North Western to Selma, Ala. The proposed cancellation would result in the application of a combination rate of 18.5 cents. Upon protest of certain lumber dealers the operation of the schedules so far as applicable to interstate traffic was suspended until January 7, 1922. Rates are stated in cents per 100 pounds.

The line of the Alabama & North Western extends 25 miles from Coxheath, Ala., southeasterly to Pine Hill, Ala., its junction with the Southern, 55 miles south of Selma. The joint rate of 11.5 cents applies over this route from all stations on the Alabama & North Western to Selma, on both interstate and intrastate traffic. The combination rate of 18.5 cents which would result from the proposed cancellation is made up of 9 cents to Pine Hill and 9.5 cents beyond.

Respondents were not represented at the hearing. Protestants' exhibits show rates to Selma ranging from 8 to 10.8 cents on lumber, in carloads, from points on lines other than the Alabama & North Western for distances exceeding 80 miles.

The present rate of 11.5 cents from Coxheath to Selma, 80 miles, based on the applicable minimum of 30,000 pounds, yields revenue of \$34.50 per car, 43.1 cents per car-mile, and 28.8 mills per ton-mile.

Respondents propose no change in their present rate of 15.5 cents on lumber, in carloads, from the same point of origin to Mobile, Ala., 154 miles. The latter rate based on the same minimum yields revenue of \$46.50 per car, 30.2 cents per car-mile, and 20.1 mills per ton-mile.

We find that the suspended schedules have not been justified. An order requiring their cancellation will be entered.

INVESTIGATION AND SUSPENSION DOCKET No. 1381.

COAL FROM DETROIT, TOLEDO & IRONTON RAILROAD
MINES.

Submitted October 31, 1921. Decided December 5, 1921.

Proposed reduction by the Detroit, Toledo & Ironton Railroad in the interstate rates on coal, carloads, from mines on its line in the Jackson county and Ironton groups in Ohio to Toledo, Ohio, Detroit, Mich., and other destinations found unduly preferential of such mines and unduly prejudicial to mines on other lines in the same and other groups in Ohio and other states. Suspended schedules ordered canceled.

C. E. Hochstedler for respondent.

Wilbur LaRoe, jr., George T. Bell, E. J. McVann, J. V. Norman, J. F. Bullitt, and C. D. Boyd for protestants.

Thomas B. Moore for Michigan Manufacturers Association.

REPORT OF THE COMMISSION.

Esch, Commissioner:

By schedules filed to become effective September 3, 1921, the Detroit, Toledo & Ironton proposed to reduce the interstate rates on coal, in carloads, from mines on its line in the Jackson county and Ironton groups in Ohio to Toledo, Ohio, Detroit, Mich., and other points served by it. Upon protests of the Northern West Virginia Coal Operators' Association and others the schedules were suspended until January 1, 1922, and later until January 31, 1922.

The Jackson and Ironton groups are situated at the southern end of the Ohio chain of mines which parallels the extensive and important coal-producing districts of Pennsylvania, West Virginia, Kentucky, and Tennessee, generally known as the inner crescent. The most important Ohio groups, besides the Jackson and Ironton, are the Hocking, Pomeroy, Cambridge, and No. 8. Coal moving from

Ohio via respondent's line to Toledo passes through Michigan and is therefore interstate commerce. Protestants' mines are located in West Virginia, Kentucky, and Tennessee, and actively compete in the sale of their coal with the mines on respondent's line. Numerous carriers serve all this coal territory. The rates, including those of respondent, are made upon the group principle. The rates from the Ohio groups are the same with the exception of those from the Iron-ton group which are 10 cents per ton higher. The suspended schedules preserve the 10-cent difference between the rates from the mines on respondent's line in the Iron-ton group and the rates from the mines on respondent's line in the Jackson group but destroy the relationship as between mines served locally by respondent and other mines in Ohio served jointly by respondent with other carriers. There are 47 coal-shipping stations in the Jackson group, all of which take the same rates. Only two of these shipping stations are situated on the line of respondent. Not all of the mines in the Iron-ton group are on respondent's line.

For many years differences in the rates between the Ohio and the inner crescent groups have depended upon differentials which, as a result of a controversy between the shippers from these competitive districts, were fixed by us after an exhaustive investigation in *Bituminous Coal to C. F. A. Territory*, 46 I. C. C., 66. This rate adjustment is again before us in No. 12698, *Southern Ohio Coal Exchange v. Chesapeake & Ohio Railway Company et al.*; and as the result of a petition filed by certain carriers, including the Detroit, Toledo & Iron-ton, we have instituted an investigation, No. 12851, *In the Matter of Intrastate Rates on Bituminous Coal within the State of Ohio*, with respect to the propriety of increasing the intrastate rates on bituminous coal within the state of Ohio to the basis of the interstate rates. These cases were consolidated for hearing with the instant case, with which they are closely related, but because of the fact that the act requires us to give preference to suspension proceedings over all other questions pending before us and to decide such proceedings as speedily as possible, we will proceed to a disposition of this case in advance of the others, which require more extended consideration, but without prejudice to any action that we may hereafter take in the cases now pending.

The reduction contemplated by the suspended schedules is merely a part of a general reduction in the interstate and intrastate rates of respondent on all commodities. All other reductions in its interstate rates have been allowed to become effective. For the first seven months of 1921 the coal tonnage produced by the mines on respondent's lines was 30,000 tons, or about 3.5 per cent of the total tonnage handled by it during that period. The total coal tonnage originating with respondent is small compared with the total

coal tonnage produced in the Ohio and the crescent districts. In proposing the reduction on coal respondent was aware of the fact that we had fixed differentials between the various competitive groups of mines of which the mines served by it are a part. It admits that the proposed reductions were predicated entirely upon its ability to handle traffic at a profit and without any consideration of the existing rate adjustment or financial condition of the other carriers. Respondent participates in joint rates from other competitive districts, and concedes that unless the other coal-carrying roads serving other Ohio mines and the inner crescent should make corresponding reductions in their coal rates, there would be no substantial justification from the standpoint of a proper rate relationship for the reduction proposed by it.

The financial condition of respondent at this time might warrant the proposed reduction, provided the issue could be determined solely upon that basis. But as we have frequently said, and as shippers themselves have frequently urged, a proper rate relationship between competitive groups, particularly on such a commodity as coal, is in many respects of greater importance to the shipping public than the measure of the rate itself. The suspended schedules involve only respondent's local coal rates which are but a few of the many coal rates, joint and local, interwoven in the rate structure from the mines already described. Thus viewed we would not be warranted in permitting the establishment of rates which would disrupt the rate relationship fixed by us and which has existed for many years.

The proposed rates, if allowed to take effect, would substantially widen the differential heretofore fixed by us between rates from the affected Ohio mines and the inner crescent. The rates from competing mines within the Ironton and Jackson groups to Toledo, Detroit, and other points of destination shown in the suspended schedules have also for many years borne a fixed relation. As already observed, with the exception of mines in the Ironton group which take rates 10 cents higher, competing mines in southern Ohio take the same rates to Toledo, Detroit, and other points of destination shown in the suspended schedules.

The interstate commerce act is not only designed to cure violations thereof, but also to prevent them, and in *Suspension of Rates on Packing-house Products*, 21 I. C. C., 68, decided June 2, 1911, we asserted the power to suspend proposed reductions in rates in any case where such suspension would operate to prevent an apparent discrimination. Undue prejudice and preference may be brought about as readily by reducing one of two related rates as by increasing the other rate.

We are of the opinion and find that the proposed reductions without corresponding reductions in rates from mines within the Jackson and Ironton groups served by respondent and other carriers under joint rates and also corresponding reductions from mines in other Ohio groups and mines in Pennsylvania, West Virginia, Kentucky, and Tennessee served by respondent and other carriers under joint rates, would result in undue preference of mines on respondent's line in the Jackson and Ironton groups and in undue prejudice to other mines in those groups, to mines in other Ohio groups, and to mines in Pennsylvania, West Virginia, Kentucky, and Tennessee, served by respondent and other carriers under joint rates.

An order will be entered requiring the cancellation of the schedules under suspension.

64 I. C. C.

No. 11542.

PARKERSBURG RIG & REEL COMPANY

v.

DIRECTOR GENERAL, AS AGENT, ATCHISON, TOPEKA
& SANTA FE RAILWAY COMPANY, ET AL.

Submitted March 19, 1921. Decided November 25, 1921.

Rates on wooden bull-wheel arms, cants, and pins, in carloads, from Parkersburg, W. Va., to points in Kansas, Oklahoma, Texas, and Louisiana, found unreasonable and unduly prejudicial. Reasonable and nonprejudicial relationship of rates prescribed for the future. Reparation awarded.

V. E. Milsark for complainant.

James M. Chaney, C. S. Burg, W. A. Eggers, George Thompson, J. R. Turney, and Henry G. Herbel for defendants.

F. R. Cross for Baltimore & Ohio Railroad Company.

John F. Finerty for Director General, as Agent.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by complainant and by the Director General of Railroads, as Agent, to the report proposed by the examiner, and the issues were orally argued.

Complainant, a corporation, manufactures at Parkersburg, W. Va., oil-well and gas-well drilling equipment and other supplies used in the oil fields. By complaint filed June 11, 1920, it attacks the rates charged on various mixed carloads of wooden band-wheel, bull-wheel, and calf-wheel arms, cants, and pins, in the rough, in bundles, shipped from Parkersburg to certain points in Kansas, Oklahoma, Texas, and Louisiana since June 25, 1918, over the line of the Baltimore & Ohio to East St. Louis, Ill., and its connections beyond, as unjust, unreasonable, unjustly discriminatory, and unduly prejudicial, in that they exceeded and exceed the rates contemporaneously applicable on lumber of the kind from which these articles are manufactured. Certain of the rates are also alleged to be in violation of the fourth section of the interstate commerce act. We are asked to prescribe reasonable, nondiscriminatory, and non-

prejudicial rates for the future, and to award reparation on all shipments made subsequent to June 25, 1918. Rates will be stated in cents per 100 pounds.

When the oil industry started in Oklahoma, shippers deemed necessary the establishment of a lower basis of rates on bull-wheel material than the class rates then in effect. East of the Mississippi River sixth-class rates applied to bull-wheel material, and this was the adjustment generally in effect in that territory on lumber. In compliance with insistent requests of shipping interests that the traffic be accorded the lumber rates west of the river, joint rates were established, effective September 24, 1908, and later dates, on bull-wheel material from various points, including Parkersburg and Wheeling, W. Va., Allegheny, Pa., Marietta, Cumminsville, Toledo, Findlay, and Van Wert, Ohio, and Fishers, Ind., to points in Oklahoma, based on the sixth-class rates to East St. Louis, and the commodity rates on lumber beyond. This basis was likewise adopted in publishing joint rates to destinations in Kansas, Texas, and Louisiana. At that time the sixth-class rate from Parkersburg to East St. Louis was 16.4 cents, and this added to the lumber factor beyond made joint rates to the following representative points in the four destination states named, as follows:

Tulsa, Okla	39.4 cents.
South Yard, Kans	41.9 cents.
Texas common points	48.4 cents.
Shreveport, La	43.4 cents.

At the same time there was a commodity rate on lumber from Parkersburg to East St. Louis of 15.8 cents. This was an exception to the general adjustment, as no commodity rates on lumber were, as a rule, in effect from the other points in eastern territory from which joint rates on bull-wheel material were established. On October 1, 1917, the class rate east of the river was increased to 18.5 cents pursuant to the permission granted in *The Fifteen Per cent Case*, 45 I. C. C., 303, and on April 25, 1918, the commodity rate on lumber was, pursuant to permission granted in an order in the same proceeding, increased to 16.8 cents. No change was at that time made in the joint rates. They remained in effect until June 25, 1918, when, pursuant to general order No. 28 of the Director General, they were increased by 25 per cent, while the combination of the commodity lumber rates from Parkersburg was subjected to a maximum increase of 5 cents, and the combination of the sixth-class rate east and the lumber rates west of the river to increases of 25 per cent and 5 cents in the respective factors.

The rates on bull-wheel material from Parkersburg prior to June 25, 1918, closely approximated the combination of commodity lumber

rates to and beyond the river. On that date the joint rates from Parkersburg as compared with the combination of lumber rates and the combination of the sixth-class rate east and the lumber rate west of the river differed as illustrated below:

To—	Joint commodity rate on bull-wheel material.	Combination of lumber commodity rates.	Combination of sixth-class rate east and lumber commodity rates west of the river.
	Cents.	Cents.	Cents.
Tulsa, Okla.....	49.5	45	51
South Yard, Kans.....	52.5	48	54
Texas common points.....	60.5	54	60
Shreveport, La.....	54.5	49	55

On various dates subsequent to June 25, 1918, the joint rates on bull-wheel material to the destinations under consideration, except to points in Louisiana, were further increased to reflect the increase made in the class factor east of the river following *The Fifteen Per Cent Case, supra*, resulting in rates to Tulsa of 52 cents, to South Yard of 54.5 cents, and to Texas common points of 63 cents. The present rates include the general increases authorized by us on July 29, 1920, which, generally speaking, became effective on August 26, 1920. The joint rates on lumber from points in central territory generally, including Parkersburg, to destinations in Louisiana are made by using published differentials over the St. Louis, Mo., lumber rates. Subsequent to June 25, 1918, the lumber differential from Parkersburg was 17 cents, which, in connection with the rate beyond St. Louis, produced a joint rate in the same amount as the combination of commodity rates on lumber. This differential adjustment seems also at one time to have obtained with respect to certain of the destinations in Texas and Oklahoma. The lumber rates since June 25, 1918, to these destinations has been on a strictly combination basis. Therefore, since that date there has been a difference between the joint rates on bull-wheel material and the combination rates on lumber, and the issue in this case is whether or not bull-wheel material should properly take the same rates as lumber. Complainant made a number of shipments subsequent to June 25, 1918, and seeks reparation thereon to the basis of the contemporaneous combination lumber rates.

The arms of a bull wheel correspond in purpose to the spokes of a wagon wheel. They are rough sawed from oak lumber and average approximately 2 inches thick, 10 inches wide, and 7.5 feet long. They have two short slots sawed in one end, are beveled at the other, and have several holes drilled through them for convenience in nailing.

The cants, rough sawed from hemlock and white pine, correspond to segments of the felloe of a wheel. They vary in thickness from 1 to 3 inches, are from 7 to 8 feet long, and several inches wide. Some, but not all, are grooved on the outer edge in order to confine the rope which passes over the wheel. The pins are rough turned from oak and are used as handles, being driven into the side of the wheel.

The lumber list of the Baltimore & Ohio applying from Parkersburg includes, among other commodities, barrel shooks, sucker-rod poles, flooring, wagon material, and telegraph cross arms. In a tariff naming rates from Chicago, Ill., and St. Louis, and from points in Illinois, Indiana, Michigan, and various other states to destinations in Oklahoma and western trunk line territory generally, bull-wheel arms and cants are embraced in the lumber list, together with bee hives, k. d., cot and mattress frame material, box lumber and shooks, flooring, silo stock, k. d., tank material sawed to shape, staves, and various other articles. In exceptions to western classification it is provided that the lumber rates shall apply on bull-wheel arms and cants.

The shipments of bull-wheel material here considered averaged 48,737 pounds per car and had an average value of approximately \$2,250 per car, or \$90 per ton, as compared with \$42.50 per ton for oak lumber, \$50.40 per ton for white pine, and \$43.33 for hemlock. Complainant gives the value of redwood lumber as about \$2,688 per car; thin oak flooring from \$4,500 to \$7,000 per car; tight-barrel shooks about the same as oak flooring; and sucker rods as being worth even more. These values are submitted to show that the value of bull-wheel material comes not only within the value of lumber itself, but is also well within the value of articles usually accorded lumber rates. Bull-wheel material is no more liable to damage in transit than lumber. Apparently no claims of this character had ever been presented.

Defendants insist that the fact that joint rates as originally established approximated the combination of lumber rates is no reason why that basis should be continued, or considered in any sense as an admission that the lumber basis is reasonable for the transportation of bull-wheel material. Throughout central territory the general basis for lumber rates is sixth class, and the specific commodity rate on lumber from Parkersburg is an exception to the general rule. Defendants state that it should have been canceled long ago as there has been no movement of lumber thereunder for years. The record shows that other articles included in the lumber list, such as tank staves, moved under this rate, but it is not shown that they were competitive with bull-wheel arms, cants, and pins. Defendants con-

tend that lumber encounters more competition than bull-wheel material and may properly take lower rates. Their exhibits show that the rates on bull-wheel material bore a more favorable relation to the class rates than the commodity rates on various articles, such as broom handles, tank and silo material, iron and steel bull wheels, and structural iron, bore to their respective class rates.

The average ton-mile revenue under the rates on bull-wheel material from Parkersburg to Oklahoma points in effect from June 25, 1918, to August 25, 1920, inclusive, was 11.05 mills, as compared with the average revenue of the Missouri, Kansas & Texas lines from all traffic of 13.11 mills for the first five months in 1919. The latter revenue is based on an average haul of approximately 240 miles. The average haul to Oklahoma points is approximately 1,000 miles.

The joint commodity rates on bull-wheel material from other points in central territory were increased the full 25 per cent following general order No. 28, as were the rates from Parkersburg, and defendants resist a revision of the rates from the latter point to the lumber basis for the reason that it will necessitate, they assert, a like revision in the other rates. They state that even the present basis from Parkersburg has brought requests from manufacturers of iron and steel bull wheels for a reduction in their rates in order to meet the competition of complainant's product.

Defendant Missouri, Kansas & Texas would have no objection to applying the lumber rates on bull-wheel material if it regarded the former as being on a reasonable level; but contends that because of the maximum increase of 5 cents allowed by general order No. 28, and the fact that this increase is added to the through charge as of June 24, 1918, rather than to each factor, the lumber rates are not only too low, but the western lines are prevented from receiving their full locals in connection with traffic from the east.

On one shipment to Homer, La., made September 26, 1919, charges were collected at the class-A rate, which exceeded the commodity rate in effect on bull-wheel material to Gibbsland, La., a point 19 miles beyond Homer over the route of movement. The Homer rate was not properly aligned with the rates to other points in the same general territory. On February 19, 1920, a rate of 60.5 cents was established to Homer which corrected this fourth section departure. The lumber rate to Homer was made on the same differential basis as applied to other Louisiana points.

Violation of the aggregate-of-intermediate-rates provision of the fourth section is also alleged in connection with the rates on bull-wheel material from Parkersburg to certain points in Kansas and Oklahoma. The factor west of the Mississippi River which complainant uses in arriving at the sum of the intermediate rates is

published to apply only on bull-wheel arms and cants and does not embrace pins, which complainant admits were included in most, if not all, of these shipments. Technically the joint rates charged were not in violation of this provision of the fourth section. Pins constitute a very small part of a shipment and witness for defendants admitted that there was no good reason for not having included them in the bull-wheel material description, and that upon proper request they would, no doubt, have amended the description to cover this additional item.

Defendants call attention to undercharges which apparently exist in connection with shipments to Billings, Garber, Hominy, and Walters, Okla. The charges collected on the shipments to these destinations appear to have been based on the combination of rates to and beyond the Mississippi River, while at the same time there were in effect applicable joint class rates.

In *Parkersburg Rig & Reel Co. v. Director General*, 59 I. C. C., 751, in considering rates in effect during 1918 and 1919 from Tulsa to Texas destinations, we said:

It appears that the value of bull-wheel material did not and does not exceed the market value of some classes of lumber, taking the lumber rate, such as redwood or quartered oak. Bull-wheel arms, cants, and pins can not from a transportation standpoint be distinguished from some of the articles classed by us in *Rates on Lumber and Lumber Products*, *supra* [52 I. C. C., 598] under the head of vehicle materials and given lumber rates.

and found that the rates there assailed on wooden bull-wheel arms, cants, and pins, in carloads, were unreasonable and unduly prejudicial to the extent that they exceeded the rates contemporaneously maintained on lumber, in carloads, from and to the same points.

As stated, lumber, generally speaking, takes the sixth-class rates throughout central territory; specific rates thereon have never been published, it is said, from that territory to destinations in Kansas, Oklahoma, or Texas, rates being based either on the combination of rates to and beyond the Mississippi River, or on a differential over the St. Louis rates. In view of the fact that the commodity rate on lumber from Parkersburg to East St. Louis constitutes an exception to the general adjustment, it can not, upon this record, be taken as affording the maximum reasonable basis for the establishment of joint rates on bull-wheel material, even under a finding that there should be no disparity between the rates on that traffic and the rates on lumber.

Bull-wheel material on the one hand, and lumber on the other, do not constitute such "like traffic" that a different charge for their contemporaneous transportation is violative of section 2 of the act. That section "should not be made the basis for an order fixing the

relationship of rates upon kindred commodities." *Board of Trade of City of Chicago v. C. & A. R. R. Co.*, 27 I. C. C., 530, 534; *Moore Stave Co. v. S. A. L. Ry. Co.*, 50 I. C. C., 229.

We find that the rates on wooden bull-wheel arms, cants, and pins, in carloads, from Parkersburg to the destinations named in the complaint, viz, Atlanta, Augusta, Burns, and Eldorado, Kans., Caddo, Homer, Lewis, Mansfield, and Shreveport, La., Billings, Blackwell, Drumright, Garber, Hominy, Okmulgee, Pawhuska, Quay, Tulsa, Walters, and Wilson, Okla., Texas common points as described in agent Leland's tariff I. C. C. No. 1212, and Houston, Galveston, and Beaumont, Tex., points, as described in agent Leland's tariff I. C. C. No. 1215, have been since June 24, 1918, are, and for the future will be unreasonable, in instances where lumber rates from Parkersburg were or are constructed by a differential over the lumber rates from St. Louis to the respective destinations, to the extent that they exceeded or may exceed the lumber rates so made; and where this differential adjustment was, or is not in effect, to the extent that they exceeded or may exceed rates composed of the sixth-class rate from Parkersburg to East St. Louis and the commodity rates on lumber from East St. Louis to the respective destinations; and that the rates assailed have been since June 24, 1918, are, and for the future will be unduly prejudicial to the extent that they exceeded or may exceed the rates contemporaneously maintained on lumber from and to the same points. We further find that complainant made shipments as described since June 24, 1918, and paid and bore the charges thereon; that it has been damaged in the amount of the difference between the charges paid and those which would have accrued at the rates herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with rule V of the Rules of Practice. There is no proof such as the law requires respecting damage by reason of the undue prejudice disclosed. Collection of the undercharges to the basis herein found reasonable should be waived.

An appropriate order will be entered.

No. 11849.

WILLOW RIVER LUMBER COMPANY

v.

DIRECTOR GENERAL, AS AGENT, AND CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAILWAY COMPANY.

Submitted April 21, 1921. Decided November 25, 1921.

Rates on logs, in carloads, during federal control, from Beebe, Hawthorne, and Gordon, Wis., to Hayward, Wis., found unreasonable. Reparation awarded.

T. M. Holland for complainant.

Fred G. Wright, John F. Finerty, Thomas M. Woodward, and John C. Brooke for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by the Director General, as Agent, to the report proposed by the examiner.

Complainant, a corporation manufacturing lumber at Hayward, Wis., by complaint filed September 23, 1920, alleges that the rates on logs, in carloads, from Beebe and Hawthorne, Wis., in April and May, 1918, and from Gordon, Wis., in April, 1919, to Hayward, for manufacture and reshipment over the lines of defendant Chicago, St. Paul, Minneapolis & Omaha, hereinafter referred to as the Omaha, were unreasonable. Reparation is sought. Rates will be stated in cents per 100 pounds unless otherwise specified.

The points named are served by the Omaha, and all except Gordon are local to that line.

Charges were assessed upon six carloads from Beebe and four from Hawthorne at the applicable rate of 7.5 cents, minimum 60,000 pounds, which was the rate on lumber from Duluth, Minn., to Hayward, applied from Beebe and Hawthorne, intermediate points. This resulted in a charge of \$45 computed on the minimum weight; and for the hauls of 56 and 63 miles from Beebe and Hawthorne, respectively, yielded 80.4 and 71.4 cents per car-mile.

Charges were assessed upon 23 carloads from Gordon at the applicable rate of 9 cents, which was the lumber rate from Duluth to

Hayward applied from Gordon, an intermediate point. The average charge on these shipments was \$65.77, which yielded \$1.495 per car-mile for the haul of 44 miles.

Complainant asks reparation to the basis of so-called contract rates, which are frequently established by carriers in that part of the country for the transportation of logs. Effective June 20, 1919, a rate of \$2 per 1,000 feet on logs was established over the Omaha from Gordon to Hayward. Complainant suggests, for the movements from Beebe and Hawthorne, a rate of \$1 per 1,000 feet, board measure.

Rates for the transportation of logs for manufacture and reshipment over the rails of the carrier having the inbound haul are often lower than the lumber rates between the same points. A rate of 2.5 cents, minimum 50,000 pounds, is in effect over the Chicago & North Western, and the Chicago, Milwaukee & St. Paul in Michigan and Wisconsin on logs for manufacture and reshipment over the line having the inbound haul for distances from 41 to 70 miles. *Saw Logs Between Michigan and Wisconsin Points*, 60 I. C. C., 350. A 3.5-cent rate applied to a minimum of 60,000 pounds would have yielded \$21 per car, and car-mile earnings of 44.7 cents from Gordon, 37.5 cents from Beebe, and 33.3 cents from Hawthorne.

We find that the rates assailed were unreasonable to the extent that they exceeded 3.5 cents per 100 pounds, minimum 60,000 pounds; that complainant made the shipments as described and paid and bore the charges thereon; that it was damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rates herein found reasonable; and is entitled to reparation, with interest. Complainant should comply with rule V of the Rules of Practice.

No. 12106.

WEST KENTUCKY COAL BUREAU

v.

ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

Submitted May 26, 1921. Decided November 25, 1921.

Rates on bituminous coal, in carloads, from mines in western Kentucky on the Illinois Central and Kentucky Midland to points in the southern peninsula of Michigan found not unreasonable but unduly prejudicial. Relationship of rates prescribed for the future.

Norman & Graham and J. V. Norman for complainant.

C. P. Hoy for Fifth and Ninth Districts Coal Bureau, intervener.

F. H. Harwood for Illinois Coal Traffic Bureau, intervener.

James A. Fenelon for Coal Trade Bureau of Illinois.

A. P. Humburg and B. J. Rowe for Illinois Central Railroad Company.

R. D. Hunter for Cleveland, Cincinnati, Chicago & St. Louis Railway Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by intervener, Fifth and Ninth Districts Coal Bureau, to the report proposed by the examiner.

In *Ohio Valley Coal Operators Asso. v. I. C. R. R. Co.*, 53 I. C. C., 148, hereinafter termed the *Ohio Valley Case*, we found that the rates on bituminous coal, in carloads, from western Kentucky mines on the Illinois Central and Kentucky Midland to Chicago, Ill., and points in the northwest, including the northern peninsula of Michigan, should not exceed by more than 25 cents per ton the rates contemporaneously maintained from mines on the Illinois Central in the southern Illinois group to the same destinations. In this proceeding, complainant, the successor of the Ohio Valley Coal Operators Association, asks the establishment of joint rates from the western Kentucky mines on the two roads above named to the southern peninsula of Michigan, hereinafter called southern Michigan, on the same basis, with relation to the rates from the southern Illinois group, as was prescribed in that case.

Petitions in intervention were filed by the Illinois Coal Traffic Bureau, the Fifth and Ninth Districts Coal Bureau, Coal Operators' Associations, and the Coal Trade Bureau of Illinois, in behalf of their respective coal-mining interests in the Illinois fields. The two first-named interveners will be referred to as the Illinois operators and the Belleville operators, respectively.

The location of the western Kentucky mines on the Illinois Central and the Kentucky Midland was described in the *Ohio Valley Case*, and need not be again described here. No joint rates are in effect from these mines to southern Michigan, and the combination rates substantially exceed the joint rates from the southern Illinois group. Complainant asks that the joint rates be constructed by adding the 25-cent differential to the rates from the southern Illinois group as of August 25, 1920, plus the increase authorized on July 29, 1920.

In *Ohio Valley Coal Operators Asso. v. I. & N. R. R. Co.*, 52 I. C. C., 187, an attack on the rates on coal from western Kentucky mines on the Louisville & Nashville and Illinois Central to points in Ohio, Indiana, and Michigan, we said at page 196:

The relationship between the rates from western Kentucky and southern Illinois mines on the Illinois Central Railroad to Chicago, Ill., is now pending before the Commission in docket No. 9517, *Ohio Valley Coal Operators Asso. v. I. C. R. R. Co.*, and on behalf of the Illinois Central it is said that the decision in that case will fix the proper relationship in the rates between the western Kentucky field and the southern Illinois field to Michigan.

The northern peninsula of Michigan is the only part of that state considered as destination territory in the *Ohio Valley Case*, which is the case referred to in the quotation, and the repeated attempts of the Illinois Central to establish the same relationship of rates to southern Michigan thus far have failed. It now has an application to establish these rates pending before the appropriate carriers' organization.

The Illinois Central does not admit that 25 cents constitutes a reasonable differential for western Kentucky over southern Illinois on coal to Chicago and the northwest, and suggests a differential of at least 50 cents. But it concedes that if 25 cents is a proper differential to that territory there is no reason why it should not apply also on traffic to southern Michigan. Joint rates are maintained from the southern Illinois group to southern Michigan, and if the joint rates here sought were established from western Kentucky, the lines beyond Chicago would receive the same revenue from both, according to the Illinois Central.

The intervening Illinois operators take the position that the differences in distances, 88 miles via Mattoon, Ill., and 121 miles via Decatur,

Ill., of western Kentucky over southern Illinois, found in the *Ohio Valley Case*, are inaccurate, and that, on the basis of the greater differences in mileage as computed by them, a higher differential than was there prescribed is justified. In that case it was shown, as here also, with respect to traffic to southern Michigan, that coal from western Kentucky and from southern Illinois to Chicago and beyond to the northwest converges at Mattoon; that to Peoria and Mendota, Ill., and via those points to the northwest, it converges at Decatur, Ill. Beyond Mattoon and Decatur the traffic from the two fields moves over the same routes and therefore the differences in distances to these points represent the differences to destination. The Illinois operators have computed the distances to Mattoon, Decatur, and Gilman, Ill., with corresponding variations. But Mattoon is the common gateway for traffic to Chicago and beyond, and it is sufficient to point out that the average difference in distance to that point in favor of the southern Illinois group is shown to be 101.5 miles, or 13.5 miles greater than was found in the *Ohio Valley Case*. Even if these figures be accepted as correct, it may be observed that our conclusions in that case are not here under review, and that the witness for this intervenor conceded, with the Illinois Central, that if 25 cents is a proper differential on traffic to Chicago and the northwest it is proper also on traffic to southern Michigan. It may also be said in this connection, as shown by complainant, that the average short-line distances from western Kentucky mines to southern Michigan points, figured over the Illinois Central to Louisville, Ky., and its connections beyond, are generally somewhat less than the distances via Mattoon, and are in some instances less than the average distances from the southern Illinois group. Complainant does not contend that the usual or practical route is via Louisville, and recognizes the right of the Illinois Central to the longer haul via Mattoon.

The rates from western Kentucky to Chicago and the northwest considered in the *Ohio Valley Case* were increased $33\frac{1}{3}$ per cent, as authorized for joint or individual rates between points in the different groups as defined in *Increased Rates, 1920*, 58 I. C. C., 220. Those from the southern Illinois group were increased generally by greater percentages. The rates from that group to southern Michigan were increased 40 per cent, the basis authorized in the eastern group. The Belleville operators contend that, in view of the fixed relationship of rates prescribed in the latter case, the carriers, in effecting the increases, should not have increased the rates from western Kentucky by a lesser percentage than was applied to those from the southern Illinois group and that, if joint rates are prescribed from western Kentucky to southern Michigan on the basis of 25 cents per ton higher

than the rates from southern Illinois in effect August 25, 1920, such rates should be subjected to the same increase, 40 per cent, as was applied to the rates from the southern Illinois group. They do not contend that the carriers, in applying the increases, have misconstrued the strict provisions of the decision in *Increased Rates, 1920*, but that it was and will be improper, for the reason stated, to increase the rates from the two fields by different percentages. These operators urge also that whether or not the differential of 25 cents was reasonable when it was established, it does not represent a sufficient spread under the present increased level of rates. As bearing on both these contentions, the following is quoted from page 248 of our report in the last-named proceeding:

Carriers serving the Pennsylvania-Ohio-West Virginia coal fields propose to continue the existing differentials in coal rates, and have worked out a scheme of rates to effect that result. Carriers in the southern and western groups propose to ignore existing differentials in coal rates within those groups. The proposal of the eastern lines to preserve existing relationships is approved, and carriers in the other groups should work out a similar plan for restoring the relative adjustments of coal rates now obtaining in those groups. An effort should be made promptly to devise rates in each group that will yield, as nearly as practicable, the same revenue in the aggregate as would be afforded by a straight percentage increase on the bases herein approved.

The Illinois Central states that the carriers are working out an adjustment of rates which will restore the former differential to Chicago and the northwest, and that if complainant's request here is granted the 25-cent differential to southern Michigan will likewise be restored. The necessity is not clear, therefore, for resorting to complainant's suggested method of constructing the rates sought, and subsequently restoring the 25-cent differential. On the contrary, no reason is apparent why the carriers may not establish the permanent differential in connection with the original publication of joint rates from the western Kentucky mines.

In *The Illinois Coal Cases, 1920*, 62 I. C. C., 741, decided July 7, 1921, we found unduly prejudicial the then existing rates on bituminous coal to the northwest from the Third Vein, Springfield, and Belleville districts to the extent that they were less than 70, 30, and 10 cents per ton, respectively, below the rates contemporaneously maintained to the same destinations from the southern Illinois group. These were the differentials generally in effect immediately prior to the general increases of August 26, 1920.

Following the *Ohio Valley Case* and *The Illinois Coal Cases, 1920*, and upon this record, we find that the rates assailed from mines on the Illinois Central and Kentucky Midland in western Kentucky to points in the southern peninsula of Michigan are not unreasonable,

but that they are and for the future will be unduly prejudicial to operators in the western Kentucky field, and unduly preferential of operators on the Illinois Central in the southern Illinois group, to the extent that they exceed or may exceed, on a joint basis, by more than 25 cents per ton the rates contemporaneously maintained from mines on the Illinois Central in the southern Illinois group to the same destinations; and that joint rates should be established on that basis.

An appropriate order will be entered.

64 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 1394.
SWITCHING CHARGES AT ATTICA, N. Y.

Submitted October 11, 1921. Decided November 29, 1921.

Proposed increase in switching charges at Attica, N. Y., found not justified in part. Suspended schedules ordered canceled.

M. B. Pierce for respondent.

Paul Tanner for Thomas-Boyce Feed Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

By schedules filed to become effective September 6, 1921, the respondent Erie Railroad proposed to increase its switching charges at Attica, N. Y. Protest was filed by the Thomas-Boyce Feed Company, and operation of the schedules was suspended until February 3, 1922. Charges will be stated in amounts per car.

Attica is on the Buffalo division of the Erie, 31 miles east of Buffalo, N. Y. It is served also by a branch of the New York Central extending south from Batavia, N. Y., and by the Arcade & Attica. In general, there are two classes of switching charges in this territory. The first is where the switching line or a connection receives a line haul; and the second is where it does not. The first class of charges is generally lower than the second, and is the only one here under consideration.

The present and proposed charges are, when the Erie Railroad or connecting carrier receives a line haul on the same car:

Between connections with—	And—	Present.	Proposed.
Arcade and Attica Railroad.	Industries having private sidings on Erie Railroad tracks.	\$4	\$5
New York Central Railroad.	Industries having private sidings on Erie Railroad tracks.	3	5
Do.....	Connections with Arcade & Attica Railroad.	3	5

The New York Central absorbs the switching charges of the Erie at Attica on all classes of traffic except grain to be milled in transit, and coal and coke. That carrier publishes the same charge of \$5 for switching between its connection with the Erie and indus-

tries having private sidings on the tracks of the New York Central at Attica as the Erie now proposes for a like service.

Respondent states that the switching charges at Attica have always been low, and it appears that they are somewhat lower than at other points in the same general territory. The Erie connects with other railroads in this territory at many points. At Batavia and LeRoy, N. Y., its interchange-switching charge is \$5, and at Wellsville, N. Y., \$7. At Friendship, N. Y., its interchange-switching charge was increased on June 20, 1921, from \$4 to \$5. At North Tonawanda, N. Y., the Erie has one interchange-switching charge of \$2 and two others of \$5 each. At Binghamton, N. Y., the Erie maintains a charge of \$2 for the switching of grain, to be milled in transit, between its connection with the Delaware, Lackawanna & Western and mills on the Erie tracks, but on other traffic between the same points its charge is \$4 on noncompetitive and \$7 on competitive traffic. The protestant has competitors at Binghamton. Its witness states that the proposed increased charges, if allowed to go into effect, would prevent protestant from extending its sales to points reached only by the New York Central route.

Protestant's mill is on a private siding which accommodates three cars for loading or unloading and connects with the Erie's rails by means of a trestle crossing a public highway. The trestle is temporary, and will not safely support the weight of an engine. It is therefore necessary to use from three to five cars between the engine and the car or cars to be placed. The distance from the interchange track of the New York Central is about 0.25 mile. Protestant's mill was established October 1, 1920, and since then has enjoyed transit rates on grain over the Erie. On June 27, 1921, a transit arrangement was put into effect by the New York Central, which makes no additional charge for the 10-mile back haul to Batavia, and therefore does not follow the usual practice of absorbing the switching charges in and out of the mill. During the month of July, 1921, respondent received approximately 19 cars of grain from the New York Central and shipped about 6 cars. In August and September, 1921, it received from 10 to 12 cars per month and shipped about the same number. Protestant now pays \$6 for the switching of each car in and out of the mill, and under the proposed charges would pay \$10.

Respondent undertakes to show that the cost per car of switching from the New York Central's interchange track to protestant's mill is \$9.72, \$5.96, or \$4.70, according as one, two, or three cars are handled in a single switching operation. The average is less than two. The items included as direct expenses are crew's wages; engine fuel, repairs, and lubricants; engine-house expense; and interest on

the valuation of the locomotive. These costs were found to be \$7.53 for one car and were assumed to be the same for the movement of two or three cars at one time. The so-called overhead expenses included the items of maintenance of way apportioned to freight traffic; superintendence; general expenses, including salaries of officers and clerks, insurance, and taxes; traffic expenses; personal injuries; and loss and damage. The total overhead expenses for the Buffalo division during the month of August, 1921, were divided between the total number of cars handled on that division, and amounted to \$2.19 per car. The time estimated for making this switching movement is one hour and five minutes. This includes the time required for the engine to get the three to five cars used to span the trestle, replace them, and return to the starting point. This seems excessive for an effective movement of only 0.25 mile. Respondent stated that ordinarily no other work is performed by the engine and crew while it is performing this switching service, but other service is occasionally rendered, as there are other industries in the vicinity of protestant's mill. From the nature of the operations at protestant's mill it seems that the inbound and outbound switching movements could be performed at the same time. The overhead expenses are improperly allocated, as they would not be the same per car for a short switching movement as for a line-haul with one or more terminal services. The cost of so small a service as the one here considered is difficult to ascertain, and the statement submitted can not be used as a dependable measure of cost. Moreover, it is based upon temporary difficulties which when corrected will materially lessen the time and labor consumed.

Because of the double switching movement to and from protestant's mill, a lower charge may properly be made for switching grain to be milled in transit at Attica than for a single switching movement, especially in view of the lower charge maintained by the Erie at Binghamton on transit grain.

We find that the proposed schedules have been justified except in so far as they increase the interchange-switching charge on grain to be milled in transit. An order will be entered requiring the cancellation of the schedules under suspension and discontinuing this proceeding, without prejudice to the filing by respondent of new schedules, on not less than five days' notice, in conformity with our finding herein.

No. 11726.¹

MITSUI & COMPANY

v.

DIRECTOR GENERAL, AS AGENT, GREAT NORTHERN
RAILWAY COMPANY, ET AL.

Submitted April 27, 1921. Decided November 25, 1921.

Rate on vegetable oils, in tank-car loads, from Everett and Tacoma, Wash., to Seattle, Wash., during federal control, found not unreasonable. Complaint dismissed.

E. J. Forman for complainant.

R. J. Hagman, Thomas Balmer, and A. J. Laughon for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by defendants to the report proposed by the examiner. We have reached conclusions differing from those recommended by the examiner.

These cases are related and will be disposed of in one report.

Complainant, a corporation engaged in general domestic, export, and import business at Seattle, Wash., by complaints seasonably filed, alleges that the rate of 12.5 cents collected by defendants on numerous shipments of vegetable oils, in tank-car loads, from Everett and Tacoma, Wash., to Seattle, moving intrastate, during 1918 and 1919, was unreasonable to the extent that it exceeded 7 cents. Reparation only is sought. Rates are stated in cents per 100 pounds.

The shipments consisted of soya-bean, castor, cottonseed, peanut, wood, and coconut oils, which usually take the same rates and are generally described as vegetable oils. They originated in the Orient and moved in tank cars from Everett and Tacoma to Seattle, where they were consolidated with similar oils and later forwarded by rail to eastern destinations. Through billing was not issued, and the shipments will be considered as local intrastate movements.

¹ This report also embraces No. 11790, Same v. Director General, as Agent, and Chicago, Milwaukee & St. Paul Railway Company.

There were nine cars from Everett, of which four moved over the Northern Pacific, 45 miles, and five over the Great Northern, 33 miles. All of the cars from Tacoma, 67 in number, moved over the Chicago, Milwaukee & St. Paul, 38 miles. The carriers named were operated by the Director General of Railroads, hereinafter referred to as defendant, as part of a unified system.

Prior to June 25, 1918, on which date all export and import rates were canceled, defendant maintained from Everett to Seattle a commodity rate of 5 cents on imported soya-bean oil. This rate did not apply on the other oils mentioned, the fifth-class rate of 10 cents being then applicable. The latter rate was increased on June 25, 1918, pursuant to general order No. 28 of the Director General, to 12.5 cents. On June 15, 1918, a commodity rate of 7 cents, not restricted to import shipments, was established between Everett and Seattle on soya-bean oil, and on September 1, 1919, its application was extended to all oils here considered. The shipments from that point moved during the period when the class rate of 12.5 cents was applicable, and charges were collected accordingly.

Between Tacoma and Seattle defendant maintained prior to June 25, 1918, a commodity rate of 5 cents, which originally applied on imported general merchandise, in any quantity. This rate was established under an arrangement between the rail and water carriers serving both Tacoma and Seattle in order that the boats might unload their cargo at the port to which the major portion of it was consigned and forward the minor portion by rail to the other port, a competitive basis of charges to the freight receivers being effected through absorption of the rail rate by the water line. Whatever may have brought about its establishment, this rate was subsequently made applicable to all export and import traffic moving between the points referred to and remained in effect until June 25, 1918, when it was canceled along with other rates of this character. Upon the cancellation of the commodity rate, the fifth-class rate, as increased to 12.5 cents under general order No. 28, became applicable, and with one exception was applied to the shipments from Tacoma, all of which moved after June 25, 1918. On one carload of castor oil charges were collected at the applicable minimum fourth-class rate of 15 cents. Where commodity rates are in effect it is the practice of all defendants herein to include castor oil in the same item with the other oils contained in these shipments and apply the same rate. Commodity rates were not established on these oils from Tacoma to Seattle subsequent to the cancellation of the import rate, and the class basis was still in effect at the time of hearing. The record makes no reference to a further movement of this traffic between Tacoma and Seattle, and the question of rates for the future is not in issue.

Complainant contends that 7 cents, which was the rate subsequently established on soya-bean oil from Everett to Seattle, would have been a reasonable rate to apply on all the shipments, and that no reason exists for charging on the other oils a rate different from that applied on soya-bean oil. It points to the fact that defendant subsequently applied the same rate on all these oils. There is but little difference in the distance from Everett and Tacoma to Seattle and no showing of any difference in the transportation conditions.

Defendant states that the import rates referred to were unduly low, having been established in relation to rates of this character then in effect on other commodities which were depressed by water competitive influences existing prior to but not during the war period when these shipments moved. He contends that the rate of 12.5 cents charged was not unreasonable, and states that the scale of class rates in effect in this territory west of the Cascade Mountains, which was prescribed by the Public Service Commission of Washington, was and is on a lower basis than class rates prescribed by that commission for application in the state of Washington east of these mountains, as well as lower than class rates prescribed by us from Pacific coast points to interstate destinations in Idaho, Montana, and other states. He also refers to a number of decisions wherein we have prescribed for shorter distances in various sections of the country class rates as high as or higher than the rates here assailed. These comparisons are based upon the assumption that it is proper to apply class rates to this traffic. Complainant does not assail the reasonableness of the fifth-class rate as such, nor question the propriety of the classification rating given to these oils, but contends that it was unreasonable to apply class rates to traffic of this kind which usually moves on lower commodity rates, especially where the volume of movement is substantial.

We find that the rate assailed was not unreasonable. The complaints will be dismissed.

No. 11735.

VIM MOTOR TRUCK COMPANY

v.

DIRECTOR GENERAL, AS AGENT.

Submitted April 26, 1921. Decided November 25, 1921.

Demurrage and storage charges assessed at New Orleans, La., on three carloads of automobile trucks found not unreasonable or otherwise unlawful. Complaint dismissed.

George J. Edwards, jr., for complainant.

Charles R. Webber for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner.

Complainant, a corporation manufacturing motor trucks at Philadelphia, Pa., alleges that by reason of the failure and refusal of defendant to place in public storage at New Orleans, La., three carloads of automobile delivery trucks shipped from Philadelphia on December 31, 1917, it was subjected to the payment of demurrage and storage charges which were unjust and unreasonable. We are asked to award reparation.

Complainant consigned the shipments to its own order, notify the Model Motor Truck Company, Incorporated, at New Orleans. They were routed by complainant over various lines to Cincinnati, Ohio, and Louisville & Nashville beyond. Under authority of an order of the Director General of Railroads dated December 29, 1917, they were diverted in transit to facilitate the movement, and arrived at New Orleans over the Illinois Central. Defendant admits that an erroneous rate was applied on two of the shipments and that an overcharge of \$28.04 exists. Prompt refund of this overcharge, with interest, should be made.

The Model Motor Truck Company was notified on February 26, 1918, of the arrival of the shipments. On March 7, 1918, the Illinois Central agent at New Orleans wired complainant that the shipments

were on hand unclaimed. Complainant had no knowledge of the diversion of the shipments until receipt of this telegram. The agent was immediately advised by complainant to place the three shipments in public storage at New Orleans. On March 8, 1918, the agent wired complainant that he was "unable to put autos in public storage until all outstanding charges were paid and bills of lading surrendered."

Considerable correspondence passed between complainant and various representatives of the Illinois Central, complainant insisting on the storing of the shipments in public storage or bonded warehouse, and defendant refusing to comply with this request without surrender of the bills of lading. Defendant claims it made every effort to effect delivery of the shipments. On March 22, 1918, to release the equipment, it unloaded the trucks from the cars and placed them in its freight warehouse. On May 4, 1918, the bills of lading were surrendered and the charges paid. At no time prior to this date did complainant offer to surrender the bills of lading and pay the charges.

Demurrage and storage charges amounting in the aggregate to \$837 were collected. The measure of the charge is not attacked, but complainant contends that the assessment of any demurrage or storage after March 8 was unlawful for the reason that defendant failed to put the trucks in public storage upon receipt of its orders; that had the shipments been promptly placed in public storage the storage charges would have been only \$90; and that it was damaged to the extent of the difference between the demurrage and storage charges collected and those which would have accrued had the shipments been placed in public storage immediately upon receipt of orders to do so.

Complainant contends that a carrier is under an obligation to unload shipments into a public warehouse without payment of charges or surrender of order bills of lading upon order of the party holding title to the goods. It admits that there was no specific tariff provision requiring defendant to place shipments in public storage, but urges that it is the common practice of carriers, except the Illinois Central, to do so. In support of its contention as to the right to direct storage, complainant cites *Piqua Milling Co. v. E. R. R. Co.*, 55 I. C. C., 239. In that case, although this question was raised, we stated that in view of our conclusions it was unnecessary to consider it.

Defendant insists that in refusing to unload and store the shipments without payment of the charges and surrender of the bills of lading he was within his legal rights. He refers to the absence of any tariff provision requiring such storage, and to an option con-

tained in section 5 of the uniform bill of lading, upon which the shipments moved, which provides:

Property not removed by the party entitled to receive it within forty-eight hours (exclusive of legal holidays) after notice of its arrival has been duly sent or given, may be kept in car, depot, or place of delivery of the carrier, or warehouse, subject to a reasonable charge for storage and to carrier's responsibility as warehouseman only, or may be, at the option of the carrier, removed to and stored in a public or licensed warehouse at the cost of the owner and there held at the owner's risk and without liability on the part of the carrier, and subject to a lien for all freight and other lawful charges, including a reasonable charge for storage.

A similar option was provided in the applicable storage tariff. He contends that to have placed the shipments in a public or bonded warehouse without surrender of the order bills of lading would have made it possible for some one other than the proper party to have obtained possession of the shipments, in which event he would have been liable to the holder of the bills of lading. The latter contention has little merit.

Defendant was legally bound to collect the demurrage and storage charges in accordance with the applicable tariff rules and regulations, and it is not shown that these charges were in violation of the act.

We find that the demurrage and storage charges collected were not unreasonable or otherwise unlawful. The complaint will be dismissed.

INVESTIGATION AND SUSPENSION DOCKET No. 1378.

LUMBER AND OTHER FOREST PRODUCTS FROM SOUTHEASTERN POINTS TO NORFOLK & WESTERN RAILWAY.

Submitted September 9, 1921. Decided December 1, 1921.

Proposed schedules effecting increases in rates on lumber and lumber products, in carloads, from southeastern territory to local points on the Norfolk & Western Railway found not justified and ordered canceled.

D. Lynch Younger for Norfolk & Western Railway Company.

P. B. Bennett for E. E. Jackson Lumber Company, protestant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

By schedules filed to become effective August 15, 1921, it is proposed to make the intermediate clause in agent Glenn's tariff I. C. C. No. A-192 inapplicable on lumber to local points on the Norfolk & Western, hereinafter called respondent. Upon protest of H. B. Rox and the E. E. Jackson Lumber Company the schedules were suspended until January 12, 1922.

Specific joint rates apply from points in Georgia, Florida, Alabama, and a portion of Tennessee, and from points in Mississippi east of the Mobile & Ohio, to Virginia cities and to certain points on respondent's line, but not to local points. The intermediate clause applies to local points between Roanoke, Va., and Hagerstown, Md., and between Roanoke and Norfolk, Va., and provides that as to such points the rates will be the same as to the next more distant point named in the tariff. It does not now apply in connection with the Southern, Alabama Great Southern, or Seaboard Air Line as initial lines, or the Louisville & Nashville or the Nashville, Chattanooga & St. Louis as initial or intermediate lines. The proposed schedules would make higher combination rates applicable and would bring about violations of the long-and-short-haul provision of section 4 of the interstate commerce act. No appropriate fourth section application has been filed with us. From Riderwood, Ala., where the protestant lumber company operates a mill, the increases would range from 6 cents per 100 pounds at Stuart's Draft, Va., to 11 cents at

Farmville, Va. Contrary to our rules and regulations, the schedules do not bear notation that they effect increases.

Respondent generally receives this traffic from the southeast at Bristol, Va.-Tenn., and to a limited extent at Norton, Va., but the routing is not so restricted by the tariffs. From the eastern portion of the territory of origin and from Atlanta, Ga., the approximate center thereof, to Lynchburg, Petersburg, Richmond, Suffolk, and Norfolk, Va., this route is somewhat circuitous as compared with one-line hauls of the Southern, Seaboard, and Atlantic Coast Line through the Carolinas; but from the western portion of the territory of origin this is the short route to Roanoke, Lynchburg, and other points in Virginia.

As the intermediate clause does not now apply to all local points on respondent's line nor on traffic over all routes from the southeast, there are certain apparent inconsistencies in the present rates. Respondent contends that the intermediate clause was published through error, but it has existed substantially as at present since 1912. It is said that the Chesapeake & Ohio, Virginian, and Baltimore & Ohio construct their rates from the southeast to local points in Virginia by combination. Respondent contends that the rates to Virginia cities and other competitive points on its line are depressed; that it had no voice in making them; and that it is entitled to fourth section relief at intermediate destinations because of circuitry of route. No comparisons of distances to points between Roanoke and Hagerstown were submitted and respondent introduced no evidence to show how the proposed rates compare with rates to other local points in this territory.

The protestant lumber company states that a difference of 1 or 2 cents per 100 pounds in rates is sufficient to divert a sale. It has shipped five or six carloads of the cheaper grades of lumber to local points on respondent's line since January 1, 1920. The present rate of 41.5 cents per 100 pounds from Riderwood to Stuart's Draft, 773 miles, yields 10.7 mills per ton mile, and the proposed rate of 47.5 cents, 12.3 mills, as compared with a rate of 30.5 cents from Fayetteville, N. C., to the same destination, 592 miles, yielding 10.3 mills.

We find that the proposed schedules have not been justified. An order will be entered requiring their cancellation and discontinuing the proceeding.

No. 8078.¹

MILLER BROTHERS

*v.*ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY
ET AL.

Submitted April 25, 1921. Decided November 18, 1921.

Upon further hearing, rates on stock cattle, in carloads, from certain points in Florida and from Birmingham, Ala., to Memphis, Tenn., found unreasonable. Reparation awarded and former report in No. 8078, 42 I. C. C., 261, modified. Rates in No. 8291 found not unreasonable or unduly prejudicial, and complaint dismissed.

H. G. Patterson for complainants in No. 8078.

Henry Thurtell for Atlantic Coast Line Railroad Company and Georgia Southern & Florida Railway Company.

L. P. Nash for St. Louis-San Francisco Railway Company.

Pat Portel for Chicago, Rock Island & Pacific Railway Company.

Frank W. Gwathmey for defendants in No. 8291.

REPORT OF THE COMMISSION ON FURTHER HEARING.

BY THE COMMISSION:

No exceptions were filed to the reports proposed by the examiners. We have modified the conclusions suggested by the examiner in No. 8078.

In our original report in No. 8078, 42 I. C. C., 261, we found that the rates applied on shipments of stock cattle, in carloads, between April 25 and July 18, 1913, from Birmingham, Ala., and certain points in Florida to Memphis, Tenn., were unreasonable, and that complainants were entitled to reparation. We prescribed reasonable rates for the future and directed complainants to comply with rule V of the Rules of Practice. Upon petition of several defendants, we reopened the case for further hearing, but did not vacate the original order. The rates prescribed therein were established March 1, 1917. No final order awarding reparation was entered, pending the decision upon rehearing.

In No. 8291 the same complainants, Joseph C. Miller, Zack T. Miller, and George L. Miller, copartners engaged in the live-stock

¹ This report also embraces No. 8291, *Miller Brothers v. Atlantic Coast Line Railroad Company et al.*

business at Bliss, Okla., under the firm name of Miller Brothers, allege that the rates applied on shipments between August 9 and 16, 1913, from certain points in Florida to Memphis were unreasonable and unduly prejudicial. Complainants ask an award of reparation and the establishment of reasonable rates for the future. Except as noted, rates will be stated in amounts per car of 20,000 pounds.

The points of origin in Florida, hereinafter named, are in the northern part of that state, west and southwest of Jacksonville, Fla., except Kissimmee, which is about 164 miles south of Jacksonville. The shipments from Florida moved over the Atlantic Coast Line, hereinafter called the Coast Line, to Montgomery, Ala., and the Mobile & Ohio, or the Mobile & Ohio and the St. Louis & San Francisco, hereinafter called the Frisco, beyond, 658 to 899 miles; and over the Georgia Southern & Florida to Macon, Ga., and the Central of Georgia and Frisco beyond, 690 to 720 miles. The shipments from Birmingham moved over the Frisco, 251 miles. There were substantial changes in the rates on June 27 and August 7, 1913. The following table shows the points of origin, the originating lines, the rates assailed, and those prescribed in our original report. For comparative purposes the distances shown are those via the routes of movement in No. 8078, which are somewhat less than those in No. 8291.

To Memphis, Tenn., from—	Originating carrier.	Distance.	Rate assailed per car of 20,000 pounds.			Rate prescribed in 42 I. C. C., 261, per car of 20,000 pounds.
			Prior to June 27, 1913.	Between June 27, 1913, and August 6, 1913.	Between August 7 and 16, 1913.	
		<i>Miles.</i>				
Jasper, Fla.....	A. C. L.....	658	\$85.00	\$134.00	\$118.00	\$85.00
Branford, Fla.....	.....do.....	697	85.00	156.60	114.00	91.00
Newberry, Fla.....	.....do.....	734	152.60	152.60	¹ 110.00	95.00
Gainesville, Fla.....	.....do.....	743	100.00	149.60	107.00	97.00
Trenton, Fla.....	.....do.....	747	155.60	155.60	² 113.00	(²)
Old Town, Fla.....	.....do.....	758	156.60	156.60	¹ 114.00	99.00
King's Spur, Fla.....	.....do.....	759	156.60	156.60	¹ 114.00	(²)
Pinland, Fla.....	.....do.....	804	161.60	161.60	¹ 119.00	105.00
Kissimmee, Fla.....	.....do.....	899	161.60	161.60	¹ 119.00	117.00
Jasper, Fla.....	G. S. & F.....	690	99.50	99.50	99.50	99.50
White Springs, Fla.....	.....do.....	708	100.00	100.00	100.00	100.00
Lake City, Fla.....	.....do.....	720	101.50	101.50	101.50	101.50
Birmingham, Ala.....	Frisco.....	251	60.00	60.00	60.00	45.00

¹ Rates assailed in No. 8291.

² Rates from Trenton not assailed in No. 8078.

³ No rate prescribed from King's Spur.

Prior to June 27, 1913, no joint rates applied except from Branford, Jasper, and Gainesville. From all the other Coast Line points of origin, the tariffs provided that through interstate rates would be the combinations to and from Jacksonville, and that is the basis upon which the rates applicable on August 7, 1913, were constructed.

When the shipments moved, the factors from the Coast Line points of origin to Jacksonville ranged from \$19 to \$31. Prior to August 7, 1913, the factor from Jacksonville to Memphis through Montgomery was \$130.60, \$68.60 to Montgomery and \$62 beyond. Contemporaneously, a combination rate of \$88 per car applied through Rossville, Ga., which is practically within the switching limits of Chattanooga, Tenn., \$46 to Rossville and \$42 beyond. On August 7, 1913, a joint rate of \$88 from Jacksonville to Memphis was made applicable over the Montgomery route. On October 10, 1916, subsequent to the shipments, this joint rate was increased to \$102.

The shipments in No. 8291 from King's Spur, formerly known as Tampa Crushed Rock Company, and from Trenton and Pinland appear to have been overcharged. As stated in our original report, some shipments in No. 8078 were undercharged and others were overcharged.

Branford is intermediate from both Newberry and Gainesville to Memphis, and the rates from these cities from June 27, 1913, to March 1, 1917, were in violation of the long-and-short-haul provision of section 4 of the act to regulate commerce.

The burden of justifying the increases resulting from the cancellation of the joint rates on June 27, 1913, rests upon defendants. When the shipments moved, the other rates assailed had not been increased since January 1, 1910.

Complainants entered an appearance at the rehearing in No. 8078, but offered no evidence. They entered no appearance in No. 8291. Defendants contend that the original record in No. 8078, on the question of reasonableness *per se* of the rates assailed, is incomplete, as their evidence was confined largely to certain specific contentions of the complainants. They now seek by additional evidence to establish the reasonableness of the rates assailed.

The factors to Jacksonville in No. 8291 averaged \$26.83. The average earnings on minimum carloads of various commodities from the same points to Jacksonville were as follows:

Tomatoes, cucumbers, and vegetables, n. o. s., under refrigeration.....	\$38. 21
Cabbage.....	40. 00
Citrus fruits.....	40. 00
Clay conduits.....	35. 25
Cement.....	37. 67
Scrap iron.....	39. 17
Lime, common.....	28. 25

The factors to Jacksonville in No. 8078 yielded car-mile earnings somewhat lower than the car-mile earnings on fruits and vegetables and other commodities from the same points to Jacksonville.

The factors beyond Jacksonville of \$130.60 prior to August 7, 1913, and \$88 after that date, yielded 19 and 11.4 mills per ton-mile, respectively, for the short-line distance of 681 miles. The factor of \$102, established on October 10, 1916, yielded 15 mills. In *Shreveport-Texas Cattle, Lignite, Wood, and Tanbark*, 48 I. C. C., 283, 292, we prescribed a joint-line rate of 27.75 cents per 100 pounds on stock cattle for distances of 681 miles, yielding 8.2 mills per ton-mile. In the southwest, cattle move regularly throughout the year, often in trainloads, and contribute substantially to the revenues of the carriers. But the movement from Florida to Memphis, and between other points in the southeast, is light and irregular, and usually shipments consist of from one to three cars. In *American National Live Stock Assn. v. S. P. Co.*, 26 I. C. C., 37, 41; 32 I. C. C., 438, we prescribed a rate of \$101.90 on stock cattle for a two-line haul of 681 miles from stations in Arizona to Los Angeles, Calif., and California feed lots, yielding 14.9 mills per ton-mile.

The factors beyond Jacksonville of \$130.60, \$88, and \$102 yielded 19, 11.4, and 15 cents per car-mile, respectively. Defendants refer to car-mile revenues from Jacksonville to Memphis on minimum carloads of other commodities, as follows: Clay, 13 cents; oak lumber, 13 cents; brass and copper scrap, 13.4 cents; canned goods, 13.5 cents; vegetables, 13.8 to 17.2 cents; and citrus fruits, 19.4 cents. These comparisons indicate that the earning of 11.4 cents at the \$88 rate was low, and that the earning of 19 cents at the rate of \$130.60 was high, as compared with the earnings on other commodities.

In No. 8291 the average distance from the Florida points of origin to Memphis is 784 miles, and the average through rate applicable on the shipments, all of which moved after August 7, 1913, was \$114.83. This yielded average earnings of 14.06 cents per car-mile and 14.06 mills per ton-mile. Defendants refer to rates on cattle between points in the south, 16 of which average \$127.20 for an average haul of 648 miles. They also show rates from points in Florida, Georgia, and Alabama to Memphis, Louisville, Ky., and New Orleans, La., which average \$106 for an average distance of 646 miles, and yield average car-mile earnings of 16.4 cents. Rates on shipments moving in the opposite direction from those in No. 8291 averaged \$138.83. Rates from New Orleans, Louisville, and Memphis to 13 points in Georgia and Florida averaged \$121.34 for an average distance of 649 miles. These comparisons tend to show that the through rates assailed in No. 8291 were not unreasonable.

In No. 8078 the average car-mile earning on the shipments, all of which moved prior to August 7, 1913, was 18.7 cents, or considerably higher than the average earning on the shipments in No. 8291. The earnings on other commodities referred to in the record are 18.6 cents

on cucumbers and tomatoes, 16.4 cents on cabbage, 16 cents on potatoes, 20.7 cents on citrus fruits and pineapples, 16.7 cents on turpentine, and 13.5 cents on lumber. The average rate assailed in No. 8078 was \$139 for an average haul of 743 miles. This is compared with rates from Memphis to Florida points and from New Orleans, East St. Louis, Ill., Vicksburg, Miss., and other points of origin to destinations in Alabama and Georgia, averaging \$127 per car for an average distance of 648 miles.

Defendants laid particular stress upon the special character of the service required in connection with shipments of cattle and the unusual risk of loss and damage in transit. It requires special equipment, movement in light trains at a comparatively high rate of speed, and provision for feed, water, and rest in transit. The live-stock movement from Florida is irregular and spasmodic. Defendants state that loss and damage claims on shipments therefrom are unusually large, "due partially to the inherent weakness of these Florida cattle and their peculiar inability to stand transportation for considerable distances." Defendants assert that if they should be required to pay all or even a considerable portion of the loss and damage claims filed during the period from 1913 to 1917, "it will doubtless wipe out every dollar that we have earned for the handling of Florida cattle to the west." From January 1, 1914, to June 30, 1917, the Coast Line's revenue on live stock was 0.66 per cent of its total freight revenues, whereas the claims actually paid amounted to 7.19 per cent of the revenue derived from that traffic and 2.33 per cent of the total loss and damage claims on all traffic.

We find that the rates applicable on the shipments in No. 8291 were not unreasonable or unduly prejudicial. These rates yielded approximately 15 mills per ton-mile, except the rate from Kissimmee, which yielded slightly over 13 mills. In No. 8078, we find that the increased rates from Gainesville, Jasper, and Branford have been justified in part, and that the rates to Memphis from the following points on the Coast Line were unreasonable to the extent that they exceeded the following rates:

Jasper, Fla.....	\$99
Branford, Fla.....	104
Newberry, Fla.....	110
Gainesville, Fla.....	111
Old Town, Fla.....	114
King's Spur, Fla.....	114
Pinland, Fla.....	119
Kissimmee, Fla.....	119

These rates yield approximately 15 mills per ton-mile, except the rate from Kissimmee, which yields slightly over 13 mills. We further find that the rates assailed from points on the Georgia Southern

& Florida were not unreasonable. We adhere to our previous finding respecting the rate from Birmingham to Memphis. With these modifications, the findings in 42 I. C. C., 261, are affirmed. Complainants should comply with rule V of the Rules of Practice, and outstanding overcharges and undercharges should be taken into consideration when the statements required by that rule are prepared. The complaint in No. 8291 will be dismissed, but defendants should promptly refund any overcharges found to exist.

No order for the future will be entered as the present rates from Atlantic Coast Line points are on a lower basis than those found reasonable herein plus the general rate increases effected since the shipments moved, except the rates from King's Spur and Trenton to Memphis, 759 and 747 miles, respectively, which were \$142 at the time of the hearing of December 18, 1919, when the rate from Old Town, 758 miles, was \$114. Defendants will be expected to establish rates which shall be substantially the same from these three points of origin.

64 I. C. C.

No. 11585.

HARPER, MARSHALL & THOMPSON COMPANY,
INCORPORATED,

v.

DIRECTOR GENERAL, AS AGENT.

Submitted March 21, 1921. Decided November 25, 1921.

Rate on soda ash, in carloads, from Painesville, Ohio, to Seattle, Wash., for export, found not unreasonable. Complaint dismissed.

H. B. Bradbury, Murray Bein, and Julian S. Eaton for complainant.

John F. Finerty for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner, and the case was orally argued.

Complainant, a corporation formerly engaged in the export and import business at New York, N. Y., alleges that the rate on soda ash, in bags, in carloads, from Painesville, Ohio, to Seattle, Wash., for export to Japan, between July and November, 1918, was unjust and unreasonable to the extent that it exceeded the previously applicable export rate of 45 cents. We are asked to award reparation. Rates are stated in amounts per 100 pounds.

Soda ash is made from common salt which it closely resembles. It is a low-grade commodity and loads heavily. At the time of movement its value was about \$3.60 per 100 pounds. The shipments, aggregating 5,311,286 pounds, moved over the New York Central, Chicago, Burlington & Quincy, and Great Northern, 2,562 miles. Charges of \$66,876.92 were collected at the applicable combination rate of \$1.26, composed of rates of 32 cents to St. Paul, Minn., and 94 cents beyond, except that on shipments aggregating 452,682 pounds which moved in November, 1918, charges were collected at a rate of \$1.25. These shipments were undercharged.

An export rate of 45 cents was applicable prior to June 25, 1918. The domestic rate was then \$1.005. On that date, pursuant to general order No. 28 of the Director General of Railroads, all export rates were canceled, thereby making applicable domestic rates as increased by that order. On July 1, 1918, or six days after the effective date of the general order, export rates on certain commodities moving in large volume, not including soda ash, were again published. The increased domestic rate on soda ash was \$1.26. On December 9, 1918, a joint rate of \$1.25 was established, and on April 21, 1919, an export rate of 60 cents.

Complainant contends that the domestic rates charged were intrinsically and relatively unreasonable and out of line with export rates on other commodities reestablished on July 1, 1918. The increases as of that date were 180 per cent on soda ash, as compared with increases on other commodities cited by complainant ranging from 46 per cent on bones to 111 per cent on paper. The rates cited for comparative purposes are not on commodities strictly analogous to soda ash.

The Railroad Administration apparently did not intend to increase by uniform percentages all export and domestic rates in effect prior to June 25, 1918. Defendant cited rates increased, as of July 1, 1918, from 84.1 per cent, on tobacco, to 150 per cent, on railway equipment. He contends that domestic rates are ordinarily normal and reasonable; that export rates are often subnormal or depressed; that the latter are established to meet competition between ports or to effect better distribution of export traffic; that during the war there was comparatively little commercial export traffic moving from Atlantic ports to the Orient; that therefore there was no occasion for retaining competitive export rates by way of Pacific coast ports; and that shipping from Atlantic ports increased and competition reappeared after the armistice, resulting in the establishment on April 21, 1919, of the export rate of 60 cents. The latter rate was increased to 90 cents on August 26, 1920. Defendant states that the reestablishment on July 1, 1918, of export rates on numerous commodities which moved in large volume was due to the vigorous complaints of shippers thereof.

Ton-mile earnings at the 45-cent rate were 3.5 mills; at the 60-cent rate 4.7 mills; at the 90-cent rate 7 mills; and at the \$1.26 rate 9.8 mills.

We find that the rate applicable was not unreasonable. The complaint will be dismissed.

EASTMAN, *Commissioner*, dissenting:

In my judgment the rate assailed was unreasonable to the extent that it exceeded \$1 per 100 pounds.

No. 11806.

UNITED IRON WORKS ET AL.

v.

DIRECTOR GENERAL, AS AGENT, MISSOURI PACIFIC
RAILROAD COMPANY, ET AL.

PORTIONS OF FOURTH SECTION APPLICATIONS
NOS. 1617, 4218, 4219, AND 4220.

Submitted April 25, 1921. Decided November 25, 1921.

1. Rates on sand, in carloads, from Fort Gibson, Okla., to Joplin, Webb City, and Springfield, Mo., and Pittsburg, Independence, and Iola, Kans., found unreasonable. Maximum reasonable rates prescribed and reparation awarded.
2. Fourth section relief denied.

S. C. Bates for complainants.

M. G. Roberts, Henry G. Herbel, and James M. Chaney for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by defendants to the report proposed by the examiner. We have reached conclusions differing somewhat from those recommended by him.

Complainants are corporations manufacturing iron and steel articles at Joplin, Webb City, and Springfield, Mo., and Pittsburg, Iola, and Independence, Kans. They allege that the rates on sand, in carloads, to these points from Fort Gibson, Okla., were and are unreasonable, unjustly discriminatory, unduly prejudicial, and in certain instances in violation of the fourth section of the interstate commerce act. We are asked to prescribe reasonable rates for the future and to award reparation. Rates will be stated in cents per 100 pounds, and do not include the general increases of 1920.

Fort Gibson is southeast of Tulsa, Okla., and about 69 miles northwest of Fort Smith, Ark. It is served by branch lines of the Missouri Pacific and the St. Louis-San Francisco, hereinafter called the Frisco. Complainants receive at their respective plants shipments

of sand from Fort Gibson, Fort Smith, Tulsa, Kansas City, Mo., and other sand-producing points. Reparation is sought on 12 shipments made during the period from September 6, 1918, to June 2, 1920, both inclusive, consigned: Two to complainant Central Foundry Company at Joplin and Webb City, respectively; five to complainant Webb City & Carterville Foundry & Machine Works at Webb City; and five to United Iron Works, Incorporated, three of which were delivered at Joplin and one each at Springfield and Independence. The last two were shipped after federal control ended. All moved over the Frisco except the shipment to Independence, which moved over the Missouri Pacific. Charges were collected at the applicable rates except on a shipment to Joplin on February 10, 1920, which apparently was overcharged.

The rates assailed are distance rates included in the following table, which also shows rates for corresponding single-line distances from Shreveport, La., to destinations in Texas, in effect when the shipments moved, based upon our decision in *Railroad Commission of Louisiana v. A. H. T. Ry. Co.*, 48 I. C. C., 312.

Distance.	Scale applied.	Shreveport-Texas scale.	Distance.	Scale applied.	Shreveport-Texas scale.
	<i>Cents.</i>	<i>Cents.</i>		<i>Cents.</i>	<i>Cents.</i>
110 miles and over 95.....	7.5	4.5	230 miles and over 210.....	10.5	6.5
130 miles and over 110.....	8	5	250 miles and over 230.....	11	7
150 miles and over 130.....	8.5	5.5	270 miles and over 250.....	11.5	7.5
165 miles and over 150.....	9	6	290 miles and over 270.....	12	8
190 miles and over 165.....	9.5	6.5	310 miles and over 290.....	12.5	8.5
210 miles and over 190.....	10	6.5			

¹ 140 miles and under.

² 175 miles and under.

³ 225 miles and under

⁴ 275 miles and under.

⁵ 300 miles and under.

The rates of the Frisco to Joplin, Webb City, and Pittsburg, namely, 10, 10, and 9 cents, respectively, were based on the short-line distance of the Missouri Pacific. The rates of the Missouri Pacific were 12 cents to Springfield, 8 cents to Independence, and 9.5 cents to Iola. The Frisco maintained a rate of 10.5 cents to Springfield but had no joint rates to Independence and Iola. Complainants do not seek joint rates to the latter points over the Frisco. They contend that the rates assailed were unreasonable to the extent that they exceed 5.5 cents.

Complainants refer to commodity rates of 5.5 and 6 cents applying from Fort Smith, South Fort Smith, and Van Buren, Ark., Arkansas City and Wichita, Kans., and Kansas City, Mo., and Tulsa, Okla., to Joplin, Webb City, and Springfield. From Fort Smith the short line to Joplin is the Kansas City Southern, 174 miles, and the short line to Webb City and Springfield is the Frisco,

180 and 181 miles, respectively. From Tulsa the distances are considerably shorter than from Fort Gibson. From Kansas City the short line to Joplin is the Kansas City Southern, 155 miles. Most of the sand from Kansas City originates at points on the Kaw River on which a switching charge must be absorbed out of the 5.5-cent rate, whereas none is absorbed at Fort Gibson. The following table shows the rates assailed, the rates instanced by complainants from Fort Smith, Tulsa, and Kansas City, the distances over the various routes, and the ton-mile earnings.

To—	Via—	From Fort Gibson.			From Fort Smith.		
		Distance.	Rate.	Ton-mile earnings.	Distance.	Rate.	Ton-mile earnings.
		<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>	<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>
Independence	Missouri Pacific	114	8	14.04	183	1 25	27.32
Do.	Frisco, Cherryvale, and A., T. & S. F.	258	(2)		248	(2)	
Pittsburg	Missouri Pacific	160	9	11.25	229	1 25	21.83
Do.	Frisco	227	9	7.92	199	10	10.05
Do.	Kansas City Southern				199	9	9.00
Iola	Missouri Pacific	180	9.5	10.56	249	1 25	20.08
Do.	Frisco, Cherryvale, and A., T. & S. F.	296			286	(2)	
Webb City	Missouri Pacific	201	10	9.55	270	5.5	4.07
Do.	Frisco	211	10	9.47	180	5.5	6.18
Joplin	Missouri Pacific	208	10	9.62	277	5.5	3.97
Do.	Frisco	210	10	9.52	184	5.5	5.97
Do.	Kansas City Southern				174	5.5	6.37
Springfield	Missouri Pacific	275	12	8.73	344	5.5	3.19
Do.	Frisco	213	10.5	9.86	181	5.5	6.08

To—	Via—	From Tulsa.			From Kansas City.		
		Distance.	Rate.	Ton-mile earnings.	Distance.	Rate.	Ton-mile earnings.
		<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>	<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>
Independence	Frisco, Cherryvale, and A., T. & S. F.	166	(2)				
Pittsburg	Missouri Pacific				144	5.5	7.64
Do.	Frisco	136	5.5	8.09	135	5.5	8.15
Do.	Kansas City Southern				129	5.5	8.52
Iola	Frisco, Cherryvale, and A., T. & S. F.	204	(2)				
Webb City	Missouri Pacific				161	5.5	6.80
Do.	Frisco	125	5.5	8.8	164	5.5	6.71
Joplin	Missouri Pacific				168	5.5	6.54
Do.	Frisco	119	5.5	9.24	162	5.5	6.79
Do.	Kansas City Southern				155	5.5	7.09
Springfield	Missouri Pacific				235	5.5	4.68
Do.	Frisco	189	5.5	5.82	192	5.5	5.73

¹ Class-E rates, which remained in effect until Feb. 16, 1920, when class-E distance rates were established from Fort Smith to Pittsburg, Independence, and Iola of 25.5, 23, and 27 cents, respectively.

² No joint rate.

Portions of fourth section applications by which authority is asked to continue to charge rates on sand over the Missouri Pacific from Fort Smith, South Fort Smith, and Van Buren to Joplin, Webb City, and Springfield, lower than from Fort Gibson and other intermediate points, were heard with this case. Fort Gibson is intermediate on the line of the Missouri Pacific from Fort Smith,

South Fort Smith, and Van Buren to Joplin, Webb City, and Springfield, and over an indirect route of the Frisco. The latter carrier does not seek fourth section relief and apparently desires to prohibit routing over its indirect line through Fort Gibson. Its tariffs should be amended accordingly. The distance over the Missouri Pacific from Fort Smith to Joplin is 277 miles, or about 160 per cent of 174 miles, the distance over the short line, the Kansas City Southern. The distance over the Missouri Pacific is likewise considerably in excess of 115 per cent of the short-line distance from and to the other points covered by the applications.

There is no showing of unjust discrimination.

We find that the rates assailed were, are, and for the future will be, unreasonable to the extent that they exceeded or may exceed, 5 and 6 cents to Independence and Pittsburg, respectively, over the Missouri Pacific; 6.5 cents to Joplin and Webb City over either the Missouri Pacific or the Frisco, to Springfield over the Frisco, and to Iola over the Missouri Pacific; 7 cents to Pittsburg over the Frisco; and 7.5 cents to Springfield over the Missouri Pacific, all subject to the increases authorized in *Increased Rates, 1920*, 58 I. C. C., 220. Any undue prejudice which may have existed or may exist will be removed by the rates prescribed. We further find that complainant United Iron Works, Incorporated, made the shipments as described and paid and bore the charges thereon; that it has been damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rates herein found reasonable; and that it is entitled to reparation, with interest. This complainant should comply with rule V of the Rules of Practice. Affidavits offered in evidence to prove payment of freight charges by the other complainants were objected to by counsel for the Director General of Railroads on the ground that the right of cross-examination was not afforded. No reparation can be awarded those complainants upon this record. Fourth section relief will be denied.

Appropriate orders will be entered.

No. 11912.

GREAT WESTERN SMELTING & REFINING COMPANY

v.

DIRECTOR GENERAL, AS AGENT, AND CHICAGO,
MILWAUKEE & ST. PAUL RAILWAY COMPANY.

Submitted May 23, 1921. Decided November 25, 1921.

Rate charged on a carload of antimony from Seattle, Wash., to Chicago, Ill., during federal control, found unreasonable. Reparation awarded.

Emuel J. Forman for complainant.

F. M. Dudley and *A. J. Laughon* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by defendants to the report proposed by the examiner, and complainant replied.

Complainant, a corporation, alleges that the rate of \$2.59 collected on one carload of antimony shipped on August 13, 1918, from Seattle, Wash., to Chicago, Ill., was unreasonable and unjustly discriminatory to the extent that it exceeded a rate of \$1 subsequently established. Reparation only is asked. Rates are stated in amounts per 100 pounds.

The shipment weighed 60,209 pounds and moved over the Chicago, Milwaukee & St. Paul. Charges of \$1,559.41 were ultimately collected at the applicable fourth-class rate of \$2.59. Prior to June 25, 1918, defendants had in effect an import rate of 90 cents, minimum 30,000 pounds, which was canceled on that date. On October 1, 1918, a domestic commodity rate of \$1, minimum 60,000 pounds, was established, and on May 29, 1919, an import commodity rate of \$1, minimum 50,000 pounds.

When the shipment moved there was in effect a domestic commodity rate of \$1, minimum 60,000 pounds, from California terminals and intermediate points to eastern defined groups. Defendants say that this rate, originally established on August 16, 1915, from Harbor City, Calif., was the basis for the subsequently established domestic and import rates cited above.

Complainant compared the rate assailed with a number of import rates contemporaneously in effect from Seattle to Chicago, among them a rate of 65.5 cents, minimum 40,000 pounds, on copper, and a rate of \$1.25, minimum 50,000 pounds, on tin. The New York market prices per 100 pounds at time of shipment were, on antimony, \$13.81; on copper, \$26; and on tin, \$90.

The distance from Seattle to Chicago is 2,173 miles. The \$2.59 rate yielded car-mile earnings of 71.8 cents and ton-mile earnings of 2.38 cents. The \$1 rate subsequently established yields 27.7 cents and 9.2 mills, respectively.

Defendants contend that transcontinental import rates from Pacific ports were established to meet competition through Atlantic ports, and that they were canceled on June 25, 1918, because competition had ceased and there was no longer necessity for maintaining import rates on a lower basis than domestic rates. They refer to the need for increased revenues which impelled the Director General to issue general order No. 28, and the subsequently established fact that the rate increases made effective by that order were insufficient to meet the cost of operation while the carriers were under federal control. They maintain that the rate assessed was reasonable for the service performed, but that if unreasonable the complainant is not entitled to reparation because it did not prove damages. This latter contention is disposed of by *Southern Pacific Co. v. Darnell-Taenzer Co.*, 245 U. S., 531. Defendants further contend that complainant has not proved that the shipment was imported. The record establishes the contrary and, furthermore, complainant is entitled to a reasonable rate whether the shipment was domestic or import. No evidence of unjust discrimination was submitted.

Under the contract of sale complainant's vendor agreed to pay the transportation charges on the basis of a rate of 90 cents. Complainant paid and bore all additional charges.

We find that the rate assailed was unreasonable to the extent that it exceeded \$1 per 100 pounds; that the shipment was made as described; that complainant paid and bore charges thereon in excess of 90 cents per 100 pounds; that it has been damaged in the amount of the difference between the charges collected and those which would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$957.32, with interest. An order awarding reparation will be entered.

CAMPBELL, *Commissioner*, dissenting:

It is my view that a rate of \$1 from Seattle to Chicago is too low on which to base an award of reparation for this movement.

INVESTIGATION AND SUSPENSION DOCKET No. 1380.
SCRAP PAPER, RAGS, AND OLD ROPE BETWEEN
WESTERN TRUNK LINE POINTS.

Submitted November 12, 1921. Decided December 6, 1921.

Proposed increased rates on scrap paper, rags, and old rope, in straight or mixed carloads, from certain points in northern Iowa and southeastern Minnesota to Chicago and Peoria, Ill., St. Louis, Mo., and points taking the same rates; also from Mason City, Iowa, to Mississippi crossings on traffic destined east of the Illinois-Indiana state line, found justified. Order of suspension vacated and proceeding discontinued.

Robert H. Widdicombe, B. F. Parsons, F. K. Crosby, O. H. Timm, J. N. Davis, F. H. Towner, and A. B. Enoch for respondents.

C. M. Haskins, H. F. Masman, and F. D. Porter for protestants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

By schedules filed to become effective August 15, 1921, respondents proposed to increase rates on scrap paper, rags, and old rope, in straight or mixed carloads, from certain stations in northern Iowa and southeastern Minnesota to Chicago and Peoria, Ill., and St. Louis, Mo., and points taking the same rates; and from Mason City, Iowa, to the Mississippi River crossings on traffic destined to points east of the Illinois-Indiana state line. Upon protest of dealers in and consumers of those commodities, the operation of the schedules was suspended until January 12, 1922. Rates will be stated in cents per 100 pounds.

Scrap paper and rags are used in the manufacture of low-grade paper, wall board, box board, and similar articles. The average loading of scrap paper is from 33,000 to 36,300 pounds. The price at Chicago of mixed paper is from 50 to 55 cents per 100 pounds; crumpled newspaper, 55 to 60 cents; and mixed rags from \$1 to \$1.15.

The points of origin are in five rate groups, each hereinafter referred to by the name of the principal point within the group, viz, Ackley and Mason City, Iowa, Albert Lea, Faribault, and Mankato, Minn. The dividing lines between groups do not follow the state line. The rates to Peoria and St. Louis, and destinations

grouped therewith, are related to the Chicago rate. Except as otherwise indicated, the rates named in this report apply to Chicago.

On January 1, 1917, the rate on scrap paper, in straight carloads or when mixed with rags and old rope, was 10.5 cents from Mason City and Ackley, 10 cents from Faribault and Albert Lea, 12 cents from Mankato, and 10 cents from St. Paul, Minn. It was proposed to increase the rates, effective February 1, 1917, from Mason City and Ackley to 13 cents; from Faribault and Albert Lea to 12.5 cents; from Mankato to 14.5 cents; and from St. Paul to 12.5 cents. These proposed rates were suspended by us and later withdrawn by the carriers except the rate from St. Paul, which became effective. Under general order No. 28 of the Director General of Railroads the rates were increased on June 25, 1918, to 13 cents from Mason City and Ackley, 12.5 cents from Faribault and Albert Lea, 15 cents from Mankato, and 15.5 cents from St. Paul. The class rates from Faribault and Albert Lea are the same as from St. Paul, and from Mankato slightly higher.

Effective February 29, 1920, the rates on scrap paper from Faribault and Albert Lea were made equal to the rate from St. Paul, but, through oversight, readjustment was not made in the rates on scrap paper when mixed with rags and old rope. The rate on straight carloads of scrap paper from Mankato was also increased at the same time to exceed the St. Paul rate, but no change was then made in the mixed carload rate. The changes of February 29, 1920, were of little avail, inasmuch as a shipper could put into a car of scrap paper a small quantity of rags or old rope and get the benefit of the lower mixed carload rate.

The present rates, which result from the general increases authorized by us on July 29, 1920, and the proposed rates, are:

From—	Distance.	Scrap paper, in straight carloads.		Rags and old rope, in straight carloads or mixed with scrap paper.		Earnings per ton-mile under proposed rates.
		Present rate.	Proposed rate.	Present rate.	Proposed rate.	
	<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Mills.</i>
Ackley, Iowa.....	316	17.5	21	17.5	21	13.3
Mason City, Iowa.....	354	17.5	21	17.5	21	11.9
Albert Lea, Minn.....	374	21	(1)	17	21	11.2
Faribault, Minn.....	397	21	(1)	17	21	10.6
Mankato, Minn.....	422	24.5	(1)	20.5	24.5	11.6

¹ No change proposed.

Respondents state that the increases proposed are not for the purpose of securing additional revenue, but to correct maladjustments.

From Iowa, southeastern Minnesota, and Omaha, Nebr., groups, the present rates on scrap paper, in straight carloads, are the same as

or less than the rates on rags and old rope, in straight carloads or when mixed with scrap paper, except as above indicated from Albert Lea, Faribault, and Mankato groups. The suspended schedules would equalize the rates on mixed carloads or straight carloads of rags and old rope from these three groups with the rates on scrap paper in straight carloads.

It is said by respondents that as the Albert Lea group is intermediate to certain points in the Ackley and Mason City groups, over some routes, it was necessary to revise the rates from the latter groups to a basis no lower than the rate from the Albert Lea group in order to remove violations of the fourth section of the interstate commerce act.

Respondents' exhibits indicate that the proposed rates to Chicago, Peoria, and St. Louis are from 3.5 to 8 cents lower than the present rates on hay and straw from and to the same points. They show that the charges per car under the proposed rates, based on minimum weight, from Mason City, Albert Lea, and Mankato to Chicago are less than on such commodities as sulphuric acid, agricultural implements, asphaltum, bags and bagging, bones, and brick. The proposed rates are from 4 to 7.5 cents lower than the central territory zone-A scale of sixth-class rates under which scrap paper generally moves in that territory. There the rates on scrap paper, in straight carloads, are the same as those on rags, old rope, and scrap paper in mixed carloads, as here proposed.

The present rates from Mason City to St. Louis yield 7.9 mills per ton-mile. This, respondents contend, is low for a commodity loading so lightly, because it is below the average yield per ton-mile revenue on heavy-loading commodities such as ore, coal, sand, gravel, and crushed stone. In comparison with rates from other groups for approximately similar hauls the ton-mile earnings under the suspended rates are low.

Protestants direct attention to the low value of the commodity, the earnings under the proposed rates, and the fact that the proposed rates will reduce the differences in rates between scrap paper and manufactured paper from 5 and 6 cents to 2 and 2.5 cents. There is no showing of competition between scrap and manufactured paper.

On traffic destined to points east of the Illinois-Indiana state line it is proposed to cancel the present proportional commodity rates from Mason City to the Mississippi River crossings, which would result in the application of somewhat higher proportional class rates restricted to the same traffic. It does not appear that there is any movement under these commodity rates.

We find that the suspended schedules have been justified. An order will be entered vacating our order of suspension and discontinuing this proceeding.

INVESTIGATION AND SUSPENSION DOCKET No. 1344.
ESTIMATED WEIGHTS ON BERRIES IN PONY
REFRIGERATORS.

Submitted November 18, 1921. Decided December 8, 1921.

Increases in estimated weights on berries in pony refrigerators, proposed in tariffs of American Railway Express Company, found not justified. Suspended schedules ordered canceled.

A. M. Hartung and *C. A. Frey* for respondent.

James E. Calkins and *C. S. Hoskins* for protestants.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS DANIELS, ESCH, AND CAMPBELL.

BY DIVISION 2:

By schedules filed to become effective June 1, 1921, and on subsequent dates, respondent, American Railway Express Company, proposes to increase the estimated weights on berries shipped by express in pony refrigerators from points in Florida to destinations throughout the United States. Upon protests of the Railroad Commission of the State of Florida, the Tampa Board of Trade, and shippers and growers of strawberries in Florida, the schedules were suspended until September 29, 1921, and their effective date subsequently postponed by agreement on the part of the respondent until January 27, 1922.

Strawberries are shipped from Florida in pony refrigerators, chiefly by express, to points throughout the United States. There are several kinds and sizes of refrigerators, but those commonly in use are the 80-quart refrigerator, 28 inches high, 35 inches wide, and 35 inches long, and the 64-quart refrigerator, 30 inches high, 28 inches wide, and 30 inches long. Both are made of wood. In the center there is space for about 50 pounds of ice, and at the top for about 125 pounds of ice. During the 1920-1921 season about 80 per cent of the shipments were in 80-quart refrigerators. The weight of the empty 80-quart refrigerator used at Plant City, Fla., is approximately 250 pounds. About 160 pounds of ice and 106 pounds of strawberries are required to fill the refrigerator, making its total weight when loaded 516 pounds. During the 1920-1921 season,

25,913 refrigerators, containing about 2,000,000 quarts of strawberries, were shipped from Florida points by express.

The present charges are based on an estimated billing weight of 250 pounds for the 80-quart and 200 pounds for the 64-quart refrigerators when loaded. The suspended schedules propose to increase the billing weight to actual gross weight, less an allowance of 25 per cent of actual gross weight for ice. At the hearing respondent suggested making the ice allowance $33\frac{1}{3}$ per cent, if approved by us. Since January 10, 1921, there has been a charge of 70 cents, regardless of distance, for the return of the empty refrigerators to the shipper. Strawberries move from Florida under commodity rates. In the absence of commodity rates second-class rates, which are 75 per cent of first class, would apply.

The proposed increases range from 13.6 per cent at Lakeland, the smallest shipping point, to 37.6 per cent at Plant City, the largest shipping point. Variation in the percentages of the increases is due to the different styles of refrigerators in use at various points. The average increase in rates from all shipping points is 25 per cent. Respondent's general tariff rule, applicable in the absence of specific provision, makes an allowance for the weight of ice amounting to 15 per cent off of gross weight from December to February, inclusive, and an allowance of 25 per cent from March to November, inclusive. At Plant City the present billing weight is 47 per cent of the actual weight of the 80-quart loaded refrigerator and the ratio of the proposed billing weight to the actual weight is 66.7 per cent.

Protestants urge that while the actual weights for loaded refrigerators are materially in excess of the present estimated weights, if the proposed weight basis is made effective it will result in the destruction of the strawberry industry in Florida, as the transportation charges will be so great and the profit to the grower lessened to such an extent that they will not be justified in continuing the industry. In addition to an increase in rates from Florida points of 49.7 per cent already effected since 1914, the charge for returning the empty refrigerators has been increased approximately 40 per cent. In 1920 we authorized general increases in express rates of 26 per cent, of which 13.5 per cent was allowed for increases in wages. Since that time a reduction in wages has been authorized. Since 1914 estimated weights have been increased from 160 to 250 pounds for the 80-quart refrigerator and from 130 to 200 pounds for the 64-quart refrigerator. The present rate per quart from Plant City to New York City is 11.16 cents as compared with a rate of 7.45 cents in 1914 and the proposed rate of 15.36 cents per quart. The average gross price per quart received by growers at points of origin during the season 1920-1921 was 35 cents, and the net profit varied from

10 to 14 cents. It was stated by several growers that the cost of producing berries was from 21.7 to 26.3 cents per quart.

While the proposed weights are more nearly in harmony with the actual weights than the present estimated weights, we must consider that the rates have been made in relation thereto. In *Increased Weights on Kale, Lettuce, and Spinach*, 61 I. C. C., 586, we said:

Where the practical and only effect of the proposed increases in estimated weights would be a substantial increase in transportation charges, the respondent should show not only that the proposed estimated weights are not excessive, but also that the application of the existing rates to such estimated weights will not result in unreasonable transportation charges to the shipper.

This has not been done. We find that the proposed schedules have not been justified. An order requiring their cancellation will be entered.

64 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 1408.

CLASSIFICATION EXCEPTIONS ON COTTONSEED CAKE,
MEAL, MOLASSES FEED, ETC., IN WESTERN TRUNK
LINE TERRITORY.

Submitted November 28, 1921. Decided December 10, 1921.

Proposed withdrawal of alfalfa feed, cane seed, cottonseed cake and meal, dried beet pulp, and other grain and grain products from the list of articles taking corn rates, in western trunk line territory, and including them in the list of articles taking wheat rates, found not justified. Suspended schedules ordered canceled.

J. C. La Coste for respondents.

J. H. Tedrow, T. J. Slattery, and R. T. Willette for Chamber of Commerce of Kansas City, Mo., Board of Trade of Atchison, Kans., Triangle Milling Company, Rudy-Patrick Seed Company, and Tarkio Molasses Feed Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

By schedules filed to become effective October 1, 1921, respondents propose to withdraw alfalfa feed, cane seed, cottonseed cake and meal, copra cake and meal, dried beet pulp, molasses feed, peanut cake and meal, sesame-seed cake and meal, sorghum seed, soya-bean cake and meal, sudan-grass seed, sugar feed, velvet-bean cake and meal, and wild-mustard seed from the list of articles taking corn rates between points in western trunk line territory and to apply thereto the wheat rates. Upon protest of the Chamber of Commerce of Kansas City, Mo., and certain manufacturers of prepared feed for cattle and poultry, the operation of the schedules was suspended until January 29, 1922.

For many years prior to June 25, 1918, corn, other coarse grains, and commodities grouped therewith generally moved between points west of Chicago and Peoria, Ill., and the Mississippi River at rates somewhat lower than those on wheat. On that date, following general order No. 28 of the Director General of Railroads, rates thereon were increased to the wheat basis, and that basis was in effect at the time of the hearing. The propriety of this increase was sustained in *National Council Farmers' Assos. v. Director General*, 56 I. C. C., 399. Respondents stated that the proposed change was made to bring about uniformity in tariff construction by placing

these commodities in the same general description and on the same level with grain products, and that no changes in the rates would result.

Protestants conceded that the proposed change would not increase the rates then in effect, but expressed apprehension lest these commodities might retain the wheat basis in case the rates on corn and other coarse grains with which they compete should again become less than the wheat rates.

On October 20, 1921, in *Rates on Grain, Grain Products, and Hay*, 64 I. C. C., 85, we found that the rates on coarse grains between points in western territory would be for the future unjust and unreasonable to the extent that they might exceed rates 10 per cent less than those prescribed on wheat, and that the rates on commodities recognized as products of coarse grains would be for the future unjust and unreasonable to the extent that they might exceed rates made by continuing the then existing relationships, except that where differentials are observed and were subjected to the percentage increases which became effective August 26, 1920, the differentials should be reduced proportionately with the rates.

If the schedules under suspension are permitted to become effective the rates on the commodities named therein will be higher than those on corn and some other coarse grains with which they are in active competition, thus disturbing the long-standing parity in rates.

We find that the schedules under suspension have not been justified, and an order will be entered requiring their cancellation.

64 I. C. C.

No. 12014.¹

EQUITY CO-OPERATIVE PACKING COMPANY

v.

DIRECTOR GENERAL, AS AGENT.

Submitted June 9, 1921. Decided December 1, 1921.

Rates on fresh meats from Haggart, N. Dak., to St. Paul and Duluth, Minn., found unreasonable. Rates on packing-house products found not unreasonable. Reparation awarded.

M. J. Malone for complainant.

John F. Finerty, D. F. Lyons, and B. W. Scandrett for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by defendants to the report proposed by the examiner. We have reached conclusions differing somewhat from those proposed by him.

Complainant, a corporation, which since July, 1919, has operated a packing house at Haggart, N. Dak., about 5 miles west of Fargo, N. Dak., alleges that unreasonable and unduly prejudicial rates were charged by defendants on shipments of fresh meats and packing-house products from Haggart to St. Paul and Duluth, Minn. The prayer is for reparation. Complainant is vitally interested in the establishment of proper rates for the future but through oversight did not specifically pray therefor. The shipments in No. 12014 moved between July 18 and December 31, 1919, and those in Sub-No. 1 between March 1 and October 31, 1920. Rates will be stated in cents per 100 pounds, and those in effect prior to the general increase of 1920, will be referred to as present rates.

Complainant has always paid class rates on this traffic, fresh meats being rated third class and packing-house products fifth class. The class rates as such are not attacked, nor is it contended that the classification ratings on these commodities are improper. In selling at St. Paul and Duluth complainant competes with packers located at those points and with others who ship from Austin and Winona, Minn., Sioux City, Iowa, Sioux Falls, S. Dak., Cedar Rapids and

¹ This report also embraces No. 12014 (Sub-No. 1), Same v. Northern Pacific Railway Company.

Mason City, Iowa, Chicago, Ill., and other points. All these points are accorded commodity rates on fresh meats, which as a rule are considerably lower than the corresponding class rates, and in all instances much lower than the rates charged complainant. What complainant desires is equality of treatment, and it would be satisfied if this were brought about by increasing the rates from its competitors' plants. There can be no question of undue prejudice to Haggart and undue preference of other shipping points, so far as the period of private control is concerned, because the Northern Pacific, which serves Haggart, is in no way responsible for the lower rates accorded complainant's competitors who ship from other points to St. Paul and Duluth.

The rates from the competitive points to St. Paul and Duluth vary. Apparently they are not made on any fixed basis but are adjusted largely to competitive and commercial conditions. The rates from several of these points and from Haggart are shown in the following table:

From—	To St. Paul.			To Duluth.		
	Short-line distance.	Fresh-meats rate.	Packing-house-products rate.	Short-line distance.	Fresh-meats rate.	Packing-house-products rate.
	<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>
Haggart, N. Dak.	256	54	30	257	54	30
Sioux Falls, S. Dak.	265	25.5	23	415	42	32.5
Sioux City, Iowa.	265	25.5	23	422	42	32.5
Mason City, Iowa.	137	23	19	293	35.5	27.5
Cedar Rapids, Iowa.	255	29.5	23	415	35.5	27.5
Austin, Minn.	97	21.5	15.5	249	35.5	25
Winona, Minn.	102	21.5	16	254	35.5	25

Just before complainant began operations it sought rates of 26 cents on fresh meats and 22.5 cents on packing-house products to St. Paul and Duluth. The matter was considered by the St. Paul district freight traffic committee of the United States Railroad Administration, but the rates were never established. They were deemed to be too low and it was feared that they would depress the westbound rates from St. Paul on these commodities. The rates that complainant is here seeking are the same as those from Sioux City and Sioux Falls to St. Paul for hauls of about the same length, and are substantially the same as those sought in 1919, except for the 35 per cent increase authorized on July 29, 1920, which it is willing to have added.

At about the time when complainant began operations the Director General of Railroads established rates of 48 cents on fresh meats and 40 cents on packing-house products from Haggart to Chicago. These rates represented substantial reductions, but no reduction was

made to St. Paul or Duluth. They applied via St. Paul, to which point the rates from Haggart were 54 cents on fresh meats and 30 cents on packing-house products. A departure from the long-and-short-haul provision of the fourth section resulted as to the fresh-meat rate to St. Paul, which was continued by the Northern Pacific and has now been aggravated by the general increase of 1920.

Austin and Winona have packing houses, and are at about the same distance south of Duluth as Haggart is west thereof. Their rates to Duluth are 35.5 cents on fresh meats and 25 cents on packing-house products. The former is a commodity rate and the latter the fifth-class rate. In April, 1920, the Northern Pacific applied to us, as provided by section 208(a) of the transportation act, 1920, for authority to publish the same rates on these commodities from Haggart to St. Paul and Duluth as those maintained by other lines from Austin and Winona to Duluth. This application was never acted upon. No further action was taken by the Northern Pacific looking to the establishment of commodity rates from Haggart, but at the hearing it indicated that, to encourage the industry, it was willing, without an order from us, to establish for the future the rates named in the application referred to, plus the 35 per cent increase. Such rates on fresh meats would be about 66 per cent of the third-class rates, and on packing-house products about 84 per cent of the fifth-class rates. Speaking generally, the present rates on fresh meat from points south of St. Paul are commodity rates ranging from 58 to 76 per cent of the corresponding third-class rates, and the rates on packing-house products are fifth-class rates or commodity rates ranging from 91 to 100 per cent of the fifth-class rates.

Defendants contend that the class rates are reasonable for the traffic in question. Haggart is only 6 miles from the Minnesota-Dakota line, and the class rates now in effect were originally made with relation to the intrastate rates in Minnesota, the basis for which was the Minnesota Railroad and Warehouse Commission's decision some years ago, as to which there was considerable litigation, it being contended, but not proven to the satisfaction of the court, that the rates were confiscatory.

The Northern Pacific contends that the rates it is willing to establish of its own accord are less than reasonable and less than complainant can fairly ask. They are based on rates from and to points south of St. Paul that are made with relation to rates from the Missouri River cities to such points as Chicago and St. Louis, which latter rates have been depressed by strong competition between the carriers and between packing-house centers. It is also urged that the rates south of St. Paul reflect more favorable transportation conditions than prevail on the Northern Pacific between Haggart

and St. Paul and Duluth. In the territory south of St. Paul the traffic density is heavier, the cost of coal less, and the weather not so severe.

We find that the rates applicable on fresh meats were unreasonable to the extent that they exceeded 35.5 cents per 100 pounds, subject on and after August 26, 1920, to the increase of 35 per cent authorized by us on July 29, 1920, and that the rates applicable on packing-house products were not unreasonable or otherwise unlawful. We further find that complainant made shipments of fresh meats as described and paid and bore the charges thereon; that it was damaged thereby in the amount of the difference between the charges paid and those that would have accrued at the rates herein found reasonable; and that it is entitled to reparation with interest. Complainant should comply with rule V of the Rules of Practice.

64 I. C. C.

No. 12049.
CHARLES BOLDT GLASS COMPANY
v.
DIRECTOR GENERAL, AS AGENT.

Submitted June 9, 1921. Decided November 25, 1921.

Charges applicable on empty glass bottles, in carloads, from Carrel street station, Cincinnati, Ohio, to Newport and Latonia, Ky., found unreasonable. Reparation awarded.

T. J. McLaughlin for complainant.

John F. Finerty and *Thomas M. Woodward* for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by defendant to the report proposed by the examiner.

Complainant, a corporation manufacturing glass containers at Cincinnati, Ohio, alleges that the charges assessed on 14 carloads of empty glass bottles shipped from Cincinnati to Newport and Latonia, Ky., between July 8, 1918, and January 2, 1919, both inclusive, were unreasonable. The prayer is for reparation.

Newport and Latonia are on the south bank of the Ohio River within the switching limits of Cincinnati. Ten shipments were destined to Newport and four to Latonia. They aggregated 492,402 pounds, each weighing between 26,000 and 40,000 pounds, excepting two which weighed 40,396 and 40,442 pounds, respectively. The shipments moved over the Pittsburgh, Cincinnati, Chicago & St. Louis, hereinafter called the Pan Handle, from its Carrel street station in Cincinnati to the north end of the Louisville & Nashville bridge, 4 or 5 miles, thence over the Louisville & Nashville, hereinafter called the L. & N., to Newport and Latonia. The distances from Carrel street station to Newport and Latonia are stated to be 6 and 9 miles, respectively, but the record is conflicting on this point. The charges were assessed on a combination of 30 cents per ton, minimum 20 tons, to the point of interchange at the north end of the L. & N. bridge and 2.5 cents per 100 pounds, minimum \$15 per car beyond. Charges aggregating \$287.12 were assessed, in most cases at the minima, equivalent to \$21 per car, or about \$1.05 per ton. On two shipments undercharges of \$7 are outstanding. The minimum charge for the movement over the L. & N. was reduced on January

31, 1919, to \$6.50 per car and the maximum charge was made \$10. Complainant seeks reparation to this basis.

Prior to June 25, 1918, the charge for movements over the L. & N. from points of interchange with various lines in Cincinnati, including the Pan Handle, to Newport, Latonia, and other points in the Cincinnati switching district, was 2 cents per 100 pounds, minimum \$5 and maximum \$8 per car. The charges established on January 31, 1919, were 25 per cent higher than those in effect prior to June 25, 1918, fractions being disposed of in accordance with general order No. 28 of the Director General of Railroads.

This general order authorized the establishment on June 25, 1918, of a minimum charge of \$15 per car on line hauls but not on switching movements. The rate covering the movement over the L. & N. was published in a switching tariff. Complainant contends that the service over that line was a switching service and that the minimum charge of \$15 was not authorized by the general order. The Cincinnati switching district is divided into zones. These shipments moved from one zone to another as local freight under regular waybills in trains controlled by train orders. Defendant contends, therefore, that the service was a line haul. But the question here is whether the charges collected were unreasonably high for the service performed irrespective of the designation of that service.

Complainant refers to rates on bottles from Carrel street to stations in the vicinity of Cincinnati ranging from 70 to 90 cents per ton for distances from 21 to 26 miles, including a rate of 90 cents from Carrel street to Silver Grove, Ky., 23 miles, applicable on traffic moving over the L. & N. bridge to Newport and presumably subject to substantially the same operating conditions as complainant's shipments.

Defendant contends that the charges assessed were not unreasonable for the service performed, which necessitated crossing the Ohio River over an expensive bridge at a heavy grade, movement through a municipality, and considerable switching and back hauling incident to the classification and placement of the cars at destinations.

We find that the applicable charges were unreasonable to the extent that they exceeded 30 cents per ton, minimum 20 tons, plus 2.5 cents per 100 pounds, minimum \$6.50, maximum \$10 per car. We further find that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged in the amount of the difference between the charges paid and those which would have accrued on the basis herein found reasonable; and that it is entitled to reparation in the sum of \$80.11, with interest. Defendant may waive collection of the outstanding undercharges.

An appropriate order will be entered.

No. 12043.

MOORE OIL REFINING COMPANY

v.

DIRECTOR GENERAL, AS AGENT, AND CINCINNATI, NEW
ORLEANS & TEXAS PACIFIC RAILWAY COMPANY.

Submitted June 2, 1921. Decided November 25, 1921.

Rate on gasoline and kerosene, in tank-car loads, from Lexington, Ky., to Cincinnati, Ohio, found unreasonable. Reparation awarded.

H. M. Myers for complainant.

John F. Finerty, Alex M. Bull, and E. C. Blanchard for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by the Director General of Railroads, as Agent, to the report proposed by the examiner.

Complainant, a corporation engaged in marketing petroleum and its products at Cincinnati, Ohio, alleges that the rate charged by defendants on 2 shipments of kerosene and 10 of gasoline in tank cars shipped during the period from January 29 to February 13, 1920, inclusive, from Lexington, Ky., to Cincinnati was unreasonable, unjustly discriminatory, and unduly prejudicial to the extent that it exceeded 14.5 cents. We are asked to award reparation. Rates are stated in cents per 100 pounds.

The shipments originated at a refinery at Lexington which had recently begun operations. They aggregated 731,417 pounds, and moved to Cincinnati over the Cincinnati, New Orleans & Texas Pacific, 82 miles. Freight charges in the sum of \$1,645.71 based on the applicable fifth-class rate of 22.5 cents were collected. Sometime previously defendants had been requested to establish commodity rates on petroleum from Lexington, and on February 17, 1920, four days after the last of the shipments moved, a commodity rate of 14.5 cents to Cincinnati became effective.

Contemporaneously there was in effect a rate of 14.5 cents on petroleum products to Cincinnati from certain points on the McRoberts branch of the Louisville & Nashville, including Beattyville, Belle Point, Campton Junction, Clay City, Evelyn, Filson, Fincastle,

Ervine, Norco, Pryse, Torrent, and Ravenna, Ky., most of which are oil-producing or refining points. The distances from these places to Cincinnati range between 116 and 156 miles. There was also a contemporaneous rate of 14.5 cents on crude oil to Louisville, Ky., from Waynesburg, Ky., 119 miles, and Somerset, Ky., 138 miles, by way of the Cincinnati, New Orleans & Texas Pacific and the Southern.

Defendants introduced an exhibit intended to show that the fifth-class rate of 22.5 cents was a low class rate, comparing it with fifth-class rates for the same distance under interstate scales in effect over the Southern, ranging from 30 to 47.5 cents, and also showing that it was lower than many fifth-class rates under certain intrastate scales. Further comparisons were made of the rate assailed with numerous commodity rates on petroleum products in southern territory, ranging from 21.5 to 32.5 cents for distances of from 38 to 91 miles. Defendants assert that the 14.5-cent rate from Pryse and the other points on the Louisville & Nashville instanced by complainant was an experimental rate established to aid in the development of the oil industry, and contend that, although commercial considerations require the establishment of the same rate from Lexington, it was a depressed rate and should not be regarded as a proper criterion of the reasonableness of the rate applied to the shipments here concerned. They also point to the rate of 20.5 cents contemporaneously applicable from Cincinnati to Lexington and show that it represents a rate of 16 cents found reasonable by us in *Petroleum to Kentucky Stations*, 43 I. C. C., 35, plus the 4.5-cent increase authorized by the Director General. Defendants concede that a rate in the reverse direction is not the standard which must be followed in establishing a rate, but say that it does furnish a guide. They cite *Rates to and from Nashville*, 61 I. C. C., 308, 334, where we stated:

We have repeatedly said that where the transportation conditions affecting the movements in opposite directions between the same points are substantially similar there should be no material disparity in the rates. *West Virginia Rail Co. v. B. & O. R. R. Co.*, 50 I. C. C., 318.

The transportation conditions in this case can hardly be called "substantially similar." It is clearly distinguishable from *Petroleum to Kentucky Stations*, *supra*, which was submitted nearly five years ago, and decided January 22, 1917. Respondents there showed that the empty-car movement in Kentucky was northbound; that the prevailing industry in this territory is agriculture; and that the volume of freight is comparatively small. Lexington was then an oil-distributing point for the surrounding territory devoted chiefly to agriculture. Since then the refinery from which these shipments

were made was built, commenced operations, and began regular shipments to Cincinnati, a large consuming center. The volume is apparent from the fact that these 12 shipments moved during a period of about two weeks. In anticipation of such movement defendants were asked in July, 1919, to establish a commodity rate. Although refining did not begin until January, 1920, defendants failed to make the commodity rates effective until February 17, 1920. Prior to that date the refinery's tanks were filled and it was compelled to dispose of some of its products or suspend refining.

The 22.5-cent rate assailed, for an 82-mile haul, may be compared with a contemporaneous rate of 27 cents from New Orleans, La., to Cincinnati, 853 miles, applicable over a route which embraces the line over which these shipments moved; also, with a rate of 22.5 cents from New Orleans to East St. Louis, Ill., 692 miles. In *Mid-continent Oil Rates*, 36 I. C. C., 109, we found reasonable from the midcontinent field rates of 20 cents to St. Louis, Mo., and 25 cents to the Chicago, Ill., group, for average distances of 412 and 620 miles, respectively. They became 24.5 and 29.5 cents under freight rate authority No. 96 of the Director General, and the latter rates were in effect when these shipments moved.

The average weight of the 12 shipments was 60,951 pounds. The earnings under the 22.5-cent rate assailed were \$137.15 per car, \$1.674 per car-mile, and 55 mills per ton-mile. Under the 20.5-cent rate applicable in the reverse direction they would be \$124.95, \$1.524, and 50 mills, respectively; and under the 14.5-cent rate subsequently established, \$88.38, \$1.078, and 35 mills, respectively.

Complainant's allegation of discrimination and undue prejudice is predicated on the maintenance of 14.5 cents from Pryse. Defendant points out that complainant was free to purchase from the refinery at that place, has done so in the past, and that the only real issue presented on the record is that of unreasonableness. Since any undue prejudice which may have existed has been removed our finding will be confined to the issue of unreasonableness.

We find that the rate assailed was unreasonable to the extent that it exceeded 14.5 cents per 100 pounds; that the shipments were made as described; that complainant paid and bore the charges thereon; and that it has been damaged thereby in the amount that the charges paid exceeded those which would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$585.16, with interest.

An appropriate order will be entered.

INVESTIGATION AND SUSPENSION DOCKET NO. 1382.

BRICK AND ARTICLES TAKING SAME RATES FROM
DANVILLE, ILL., TO CHICAGO RATE POINTS.

Submitted September 23, 1921. Decided December 6, 1921.

Proposed reduction in interstate rates on brick and articles taking the same rates, in carloads, from Danville, Ill., to certain points in Indiana in the Chicago, Ill., group, and from Streator, Ill., to Chicago, found not justified as to Danville, and justified as to Streator. Appropriate order entered and proceeding discontinued.

C. N. Richards for Wabash Railway Company, respondent.

Francis E. Webster for Chicago & Eastern Illinois Railroad Company and its receiver.

C. R. Hillyer for Western Brick Company and Danville Brick Company.

R. B. Coapstick for C. B. Poston.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND LEWIS.

BY DIVISION 3:

By schedules filed to become effective August 18, 1921, respondents proposed to reduce the rates on brick, and articles taking the same rates, in carloads, over certain routes from Danville, Ill., to Gary and Hammond, and certain other points in Indiana taking Chicago, Ill., rates, and interstate from Streator, Ill., to Chicago. Upon protest of the Indiana State Chamber of Commerce on behalf of C. B. Poston, a brick manufacturer at Attica, Ind., operation of the schedules was suspended until January 15, 1922. Rates will be stated in amounts per net ton.

The present rates from Danville over the Wabash alone, or in connection with certain other delivering carriers in the Chicago district, are \$1.82 to Gary and \$1.96 to Hammond and certain other Indiana points; and the proposed rate to all of these destinations is \$1.68.

The reduction is proposed in order that the Wabash, which forms a distinctly circuitous route from Danville to these destinations, may compete for traffic at the \$1.68 rate in effect over the direct lines of the Chicago & Eastern Illinois and the New York Central. The

Wabash is shown in the tariffs of those carriers as participating in the rate of \$1.68 from Danville over the short lines.

The present rate from Attica to Gary and Hammond is \$1.96. The Wabash and the Chicago & Eastern Illinois both serve Attica, but the Wabash route from Attica, as from Danville, is much more circuitous. Protestant contends that there should be no difference in the rates from Danville and Attica to the Indiana points under consideration, and that to authorize the publication of the \$1.68 rate over the Wabash will be to accentuate an already prejudicial situation. Protestant also takes the position that as the adjustment of rates from this territory is one of the matters under consideration in No. 10733, *National Paving Brick Mfrs. Asso. v. A. & V. Ry. Co.*, recently submitted, we should do nothing now that might tend to complicate the situation.

For several years following the so-called 1911 brick-rate adjustment Danville and Attica were grouped and took the same rates on brick to Chicago and to Chicago rate points. But, due chiefly to the failure of the carriers within Illinois to obtain the benefit of several subsequent general increases authorized by us in interstate rates, this adjustment has been disrupted and as a result we have the unequal rate situation now existing between these points of production. In Ex Parte No. 67, *Illinois Classification*, 56 I. C. C., 687, decided February 3, 1920, we recognized as clear the undue prejudice against the Indiana producing points and with a view to affording temporary relief, the record being inadequate for a comprehensive adjustment, we recommended the establishment of a rate of \$1.40 on brick, other than common, to Chicago proper from certain Illinois and Indiana producing points, which included Danville and Attica. The only justification offered by the Wabash for the establishment of the \$1.68 rate is its desire to compete for traffic with the shorter routes from Danville which now carry that rate. If the \$1.68 rate were not now in effect over the other routes and the Wabash were here attempting to initiate it, the resulting undue prejudice to Attica, which is also served by the Wabash, would stand forth unrelieved and without justification of any kind. We pointed out in *Illinois Classification Case, supra*, that the rates on brick from this territory were to be considered in the *General Brick Case*, No. 10733, *supra*. It is our view that we should sanction nothing here that might lead to embarrassment in deciding that case.

The present interstate rate from Streator to Chicago over the Wabash alone, a circuitous intrastate route, is \$1.54. The proposed rate of \$1.50 over this route is the same as that maintained by the direct lines. No protest to this reduction was made. Since February 19, 1921, the intrastate rate from Streator to Chicago has also

been \$1.54, pursuant to our order of January 11, 1921, in *Intrastate Rates within Illinois*, 60 I. C. C., 92, and no proposal is made to reduce this intrastate rate. On March 29, 1921, we entered an amendatory order in that proceeding which provided that nothing in our order of January 11, 1921, shall be construed as requiring any carrier to establish or maintain any rate on intrastate traffic which is greater than the corresponding rate applicable to interstate traffic from and to the same points. Respondents will be expected to make a like and simultaneous reduction in their intrastate rate from Streator to Chicago.

We find that respondents have justified the proposed rate from Streator to Chicago but have not justified the proposed reduced rate from Danville to Gary, Hammond, and the other points in Indiana in the Chicago group.

An order will be entered requiring the cancellation of the rates herein found not justified; vacating our order of suspension in so far as it applies to the rate found justified; and discontinuing this proceeding.

64 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 1379.

STORAGE CHARGES ON APPLES AND PEARS IN EASTERN GROUP ON TRANSCONTINENTAL TRAFFIC.

Submitted November 10, 1921. Decided December 6, 1921.

Proposed increased charge for storage in transit in the eastern and western groups of apples and pears, in carloads, moving in transcontinental traffic found not justified. Suspended schedules ordered canceled.

P. B. Beidelman for respondents.

R. Cumming for American Fruit & Vegetable Shippers' Association and *J. C. Folger* for International Apple Shippers' Association, protestants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

By schedules filed to become effective August 15, 1921, respondents proposed to increase their charge for storage in transit in the eastern group of apples and pears, in carloads, moving in transcontinental traffic, and to cancel the charge at points in the western group, thereby making applicable the charges in tariffs published by agent Boyd or by individual lines. Upon protest of shippers of those commodities operation of the schedules was suspended until January 12, 1922. Charges will be stated in cents per 100 pounds.

For a number of years the eastbound transcontinental tariffs contained a provision for storage in transit of carload shipments of apples, subject to the applicable rules of the individual lines, which protected the through rate thereon plus a storage charge of 5 cents. For a shorter period a similar rule has been in effect on pears.

In *Increased Rates, 1920*, 58 I. C. C., 220, we authorized percentage increases in charges for storage, other than track storage, equal to those allowed in the group where the storage takes place, except that at points on the boundary line between two groups taking different percentages the higher percentage should be applied. In pursuance of that authority, on August 26, 1920, the carriers increased this storage charge from 5 cents to 6.5 cents. By the schedules under suspension they proposed a further increase to 7 cents in the eastern group. Their proposed cancellation of the present

charge in the western group would result in a like increase, except where tariffs of individual lines provided different charges.

The only justification offered for the proposed increase is that 7 cents is the amount to which the charge should have been increased following the case cited. Respondents state that through error of the publishing agent, an increase of only $33\frac{1}{3}$ per cent was applied instead of the percentages authorized.

As the time limitation prescribed in the case cited had expired prior to the filing and effective date of the suspended schedules, justification of the increase must be based upon other foundations.

We find that the schedules under suspension have not been justified. An order will be entered requiring their cancellation and discontinuing this proceeding.

64 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 1387.
ABSORPTION OF TERMINAL CHARGES ON GRAIN FOR
EXPORT AT TEXAS PORTS.

Submitted November 7, 1921. Decided December 8, 1921.

Proposal to limit absorption of charges for switching and unloading grain and certain grain products, in carloads, at Galveston, Tex., on shipments from Minneapolis, Minn., when originating beyond and when for export, found justified to the extent indicated in the report. Nonpreferential rates for the future prescribed.

J. S. Hershey, H. Booth, C. W. Owen, and J. F. Garvin for respondents.

E. H. Thornton for Galveston Commercial Association.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Under present tariffs of the Minneapolis & St. Louis, Chicago Great Western, and their connections, naming proportional rates on grain and certain grain products, in carloads, from Minneapolis, Minn., to Galveston, Tex., for export, the terminal charges of the Galveston Wharf Company and the Southern Pacific Terminal Company at Galveston, consisting of separate switching, unloading, and wharfage charges, are absorbed, except that switching charges only are absorbed on grain in bulk under the tariffs of the Minneapolis & St. Louis, and on wheat in bulk under the tariffs of the Chicago Great Western. By schedules filed to become effective August 30, 1921, and September 11, 1921, respectively, and suspended until January 27, 1922, respondents propose to limit certain of these absorptions. No change is proposed in the absorption of wharfage charges. The suspended schedules would likewise change the absorption provisions at certain other Texas ports, but the evidence adduced has reference mainly to the situation at Galveston.

The present charges, which are absorbed in full at Galveston, and the proposed absorptions are as follows:

	Grain wheat.	Flour.	Bran and malt.
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Unloading from cars, when in sacks or barrels:			
Present charges, per 100 pounds.....	2	2	3.25
Proposed absorption, per 100 pounds.....	1.5	1.5	2.25
Switching to elevators, when in sacks or barrels:			
Charge per car of Galveston Wharf Company.....	450	450	450
Charge per car of Southern Pacific Terminal Company.....	350	350	350
Proposed absorption per car.....	350	350	350
Switching to elevators, when in bulk:			
Charge per car of Galveston Wharf Company.....	450		
Charge per car of Southern Pacific Terminal Company.....	350		
Proposed absorption, per car.....	300		

The suspended schedules of the Minneapolis & St. Louis relate only to grain routed over the Atchison, Topeka & Santa Fe. Those of the Chicago Great Western cover wheat, flour, bran, and malt routed over all connecting lines. The present tariffs of both originating carriers apply in connection with all routes.

The proposal is to make the absorption provisions on traffic from Minneapolis conform to those in effect on traffic from the Missouri River gateways and from Nebraska, Kansas, Missouri, and Oklahoma. No justification was offered for the item in the one tariff providing for only partial absorption of the charges for switching grain in sacks, or for the item in the other tariff providing for only partial absorption of the charges for switching wheat, flour, bran, and malt, in sacks or barrels, because all the charges for those services are now absorbed on shipments from this other general territory of origin. We have only to consider the item in the one tariff which limits the absorption of charges for switching grain in bulk and unloading grain in sacks, and the item in the other tariff which limits the absorption of charges for switching wheat in bulk and unloading wheat in sacks. Hereinafter the term grain will be understood to mean wheat so far as the suspended schedules of the Chicago Great Western are concerned.

The present tariff provisions of the Minneapolis & St. Louis became effective February 5, 1921, and those of the Chicago Great Western on November 22, 1920. In May, 1921, the departures from the Missouri River basis of absorption were discovered. The proposed schedules are to correct what respondents allege were errors in tariff compilation and publication.

The only similar situation known to respondents affects grain originating on the Chicago, Rock Island & Pacific, and is now the subject of correspondence with a view to action corresponding to that here proposed. The protestants at Galveston state that tariffs of the Chicago, Burlington & Quincy and the Chicago, Milwaukee

& St. Paul, as to which no change is proposed, now provide for full absorption of the terminal charges here in issue.

Protestants concede that the suspended schedules would place grain from Minneapolis to Galveston on the same absorption basis as grain from the Missouri River to Galveston, but refer to the situation at New Orleans, a competing port, where all these charges are absorbed on grain from Minneapolis and from the Missouri River. They now have to meet the competition of New Orleans on Missouri River grain as to which all the charges are absorbed at New Orleans and only a part at Galveston. Under the suspended schedules the same relative situation would result in respect of Minneapolis grain. All the charges would be absorbed at New Orleans and only a part at Galveston. The general question of discrimination as between Galveston and New Orleans in the matter of absorption of terminal charges is now before us in Docket No. 12798, *Galveston Commercial Asso. v. G., C. & S. F. Ry. Co.*, and that of absorption of switching charges at Galveston on grain in bulk originating at the Missouri River and producing territory west thereof in Docket No. 12639, *Clay Grain Co. v. Director General*.

It appears that grain is shipped from Minneapolis to Galveston only under exceptional conditions of demand and is used largely for mixing with southwestern grain. Of 9,997 cars of wheat received at Galveston over the Gulf, Colorado & Santa Fe during July and August, 1921, 4,753 were from Texas, 2,853 from Oklahoma, 1,959 from Kansas, 34 from Kansas City, and 398 from all other points, including Minneapolis.

We find that the schedules under suspension in so far as they make the terminal absorption provisions on the comparatively small volume of tonnage from Minneapolis conform with those on the much larger volumes from the Missouri River and from Nebraska, Kansas, Missouri, and Oklahoma have been justified, since they remove a preference of Minneapolis over these other sources of greater production on shipments to Galveston. An order will be entered requiring respondents to cancel the schedules under suspension and to establish and maintain for the future tariff provisions, applicable on grain, in carloads, moving over lines parties to the Minneapolis & St. Louis tariff, and on wheat, flour, bran, and malt, in carloads, moving over lines parties to the Chicago Great Western tariff, from Minneapolis to Galveston, when originating beyond and when for export, which provide for the absorption of the switching and unloading charges of the Galveston Wharf Company and the Southern Pacific Terminal Company, at Galveston, to the same extent as those charges are absorbed by them on like traffic from Missouri River gateways and from points in Nebraska, Kansas, Missouri, and Okla-

homa. Under this order Minneapolis and these other sources of production will be equally affected by such decisions as may be made in the proceedings referred to now pending before us. Respondents will be expected to make similar provisions for absorption of charges at other Texas ports affected by the suspended schedules.

Protestants suggest that the schedules of the Minneapolis & St. Louis under suspension conflict with item 40 of the same tariff, which provides for shipside rates at Galveston. But the schedules under suspension are published as an "Exception to Application of Rates" and limit the absorption as proposed. The tariff should be amended to preclude the possibility of confusion in this respect.

64 I. C. C.

No. 5504.

COTTON MANUFACTURERS' ASSOCIATION OF SOUTH
CAROLINA

v.

CAROLINA, CLINCHFIELD & OHIO RAILWAY, DIRECTOR
GENERAL, ET AL.

Submitted July 23, 1921. Decided November 18, 1921.

Reparation awarded to certain interveners upon shipments of bituminous coal from Appalachia and Dante districts in Virginia to Union, S. C., on which the charges were paid prior to December 31, 1915, at rates found unreasonable in the second supplemental report in this proceeding, 57 I. C. C., 584.

W. N. McGehee for complainants.

Frank W. Gwathmey for defendants.

THIRD SUPPLEMENTAL REPORT OF THE COMMISSION.

BY THE COMMISSION:

No exceptions were filed to the report proposed by the examiner.

Our former reports in this proceeding appear in 37 I. C. C., 652; 53 I. C. C., 741; and 57 I. C. C., 584. In our second supplemental report, 57 I. C. C., 584, we found that during the period from October 15, 1911, to December 31, 1915, the rates on bituminous coal from the Appalachia and Dante districts in Virginia to Spartanburg and other points in South Carolina taking the same or related rates were unreasonable, and awarded reparation to complainant's members specified in the original complaint on shipments made during that period. We also awarded reparation to the interveners, Excelsior Knitting Mills and Gault Manufacturing Company, corporations located at Union, S. C., on shipments which moved during the period from December 31, 1915, to August 21, 1916, the date on which the rates found reasonable in our original decision became effective. As no proof was submitted by these interveners with respect to shipments made between May 1, 1915, and December 31, 1915, as prayed for in their intervening petition, filed April 30, 1917, a further hearing has been had for the purpose of affording them an opportunity to offer proof necessary to support an award of reparation on such shipments under the findings already made in this proceeding. This proof has now been submitted, counsel for defendants agreeing to accept an affidavit filed on behalf of the
64 I. C. C.

Gault Manufacturing Company covering the shipments made by it during this period.

We find that during the period from May 1, 1915, to December 31, 1915, the Excelsior Knitting Mills and the Gault Manufacturing Company made shipments of bituminous coal in carloads from points of origin in the districts above named to Union, S. C.; that they paid and bore the charges thereon at the rates heretofore found unreasonable; that they have been damaged to the extent of the difference between the charges paid and those that would have accrued at the rates found reasonable in the previous reports in this proceeding; and that they are entitled to reparation, with interest. Interveners should comply with rule V of the Rules of Practice.

COMMISSIONERS HALL and DANIELS dissent.

64 I. C. C.

No. 11934.¹

AETNA EXPLOSIVES COMPANY, INCORPORATED,

v.

CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY,
DIRECTOR GENERAL, AS AGENT, ET AL.

Submitted July 5, 1921. Decided November 25, 1921

Rates on glycerin, other than chemically pure or bleached, in iron drums, in carloads, from Kansas City, Mo., to Fayville, Ill., found unreasonable. Reparation awarded.

Strasbourg & Schallek for complainant.

Frank E. Webster for defendant Chicago & Eastern Illinois Railroad Company and its receiver.

W. B. Knight for Director General.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions to the examiner's proposed report were filed.

Complainant, a corporation manufacturing explosives at Fayville, Ill.; alleges that the rates charged on seven carloads of glycerin, other than chemically pure or bleached, from Kansas City, Mo., to Fayville, during the period between June, 1919, and August, 1920, were unjust and unreasonable to the extent that they exceeded 22 cents. Reparation only is asked. Rates are stated in cents per 100 pounds.

The shipments aggregated 305,188 pounds. Six of them moved over the St. Louis-San Francisco and the Chicago & Eastern Illinois, hereinafter referred to as the Frisco and the C. & E. I., respectively, and one over the Missouri Pacific and the C. & E. I. Fayville is on the Mississippi River, 4.6 miles below Thebes, Ill. No joint rates were in effect, and charges aggregating \$1,107.19 were collected at the applicable combination rates, ranging from 30 to 43 cents. When the shipments moved, a rate of 22 cents, which also applied to Thebes, was in effect over the Missouri Pacific direct. This line has its own rails from Kansas City to Fayville, and its tracks pass through complainant's property over a trestle and a high and steep embankment about 20 feet from its warehouse. The

¹ This report also embraces No. 11951, Same v. Missouri Pacific Railroad Company, Director General, as Agent, et al.

glycerin is shipped in iron drums, weighing about 1,400 pounds each, is dangerous to unload from these tracks, and therefore usually routed for C. & E. I. delivery, the tracks of that road being on a level with the river. The Thebes basis of rates had previously applied at Fayville over the Frisco and C. & E. I. under a "free switching" arrangement, and over the Missouri Pacific and C. & E. I. under a 2.5-cent switching charge, which was absorbed by the former. These arrangements at Fayville were canceled by the C. & E. I. because of a dispute over divisions, under some sort of understanding with complainant that if it offered no objection to the cancellation the straight Thebes basis of rates would be established to Fayville. This had not been done over the routes of movement at the time of shipment. The distance from Kansas City to Fayville over the Missouri Pacific direct is 405 miles; over the Missouri Pacific and C. & E. I., 403 miles; and over the Frisco and C. & E. I., 467 miles.

No defense of the rates charged was offered by defendants. The witness for the C. & E. I. testified that in his judgment the rates to Fayville should have been upon the Thebes basis when these shipments moved.

The weighted-average distance over the routes of movement was 458 miles. The weighted-average rate collected, 36.2 cents, yielded earnings of 15.8 mills per ton-mile and 34.46 cents per car-mile based on the average weight of these shipments. A 22-cent rate would have yielded 9.6 mills and 20.94 cents, respectively.

Upon this record we find that the rates assailed were unreasonable to the extent that they exceeded 22 cents per 100 pounds; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged in the amount of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that it is entitled to reparation from James C. Davis, Director General of Railroads, as Agent, in the sum of \$314.01, and from the other defendants in the sum of \$121.78, with interest.

An appropriate order will be entered.

CAMPBELL, *Commissioner*, dissenting:

I am unable to concur in a finding of unreasonableness of the rates charged for the movement involved. The 22-cent rate, the basis on which reparation is awarded, yields only 9.6 mills per ton-mile and, based on the average loading of 43,598 pounds, 20.94 cents per car-mile for the weighted-average distance of 458 miles. The weighted-average rate collected of 36.2 cents yielded earnings of 15.8 mills per ton-mile and 34.46 cents per car-mile. I think the complaint should be dismissed.

No. 12055.
PROCTER & GAMBLE COMPANY
v.
DIRECTOR GENERAL, AS AGENT.

Submitted July 2, 1921. Decided November 25, 1921.

Charges assessed on 155 new empty tank cars moving on their own wheels from Milton, Pa., to various destinations in North and South Carolina found illegal. Refund of overcharges directed and complaint dismissed.

W. E. Willey for complainant.

Thomas M. Woodward for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation, by complaint filed December 18, 1920, alleges that the rate charged on 155 new empty tank cars moving on their own wheels from Milton, Pa., to various destinations in North Carolina and South Carolina, shipped between February 14 and May 1, 1918, was illegal, unreasonable, and in excess of the aggregate of intermediate rates. Reparation is sought.

The consignor routed 145 of the cars over the Pennsylvania to Potomac Yard, Va., and the Southern, via Lynchburg, Va., beyond; the others over the Pennsylvania and the Richmond, Fredericksburg & Potomac to Richmond, Va., and Atlantic Coast Line or Seaboard Air Line beyond. Charges were collected at a rate of 6 cents per car per mile, as provided in the southern classification. Prior to April 25, 1918, the official classification rating on new empty tank cars was 4.2 cents per car per mile. On the date mentioned it became 5 cents.

In *Aetna Explosives Co. v A. G. S. R. R. Co.*, 52 I. C. C., 235, we held that the 6-cent rate above referred to was not applicable for the entire distance from Milton to destinations in southern territory. Following our decision in that case, we find that the charges assessed on the 155 cars referred to were illegal to the extent that they exceeded the charges that would have accrued at the combination of rates based on official and southern classification ratings to and from Lynchburg and Petersburg, Va., as the respective cars moved. Defendant will be expected to refund promptly the outstanding overcharges. The complaint will be dismissed.

INVESTIGATION AND SUSPENSION DOCKET NO. 1413.
CAST-IRON PIPE AND CONNECTIONS FROM BIRMINGHAM DISTRICT TO MONTANA POINTS.

Submitted October 30, 1921. Decided December 10, 1921.

Proposed cancellation of existing basis for rates and application in lieu thereof of combination rates on cast-iron pipe and pipe connections, in carloads, from certain points in Tennessee and Alabama to Montana destinations, found justified. Order of suspension vacated and proceeding discontinued.

O. W. Dynes for respondents.

A. S. Lucas and *E. M. Cole* for protestants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

By schedules filed to become effective October 3, 1921, respondents proposed to cancel the existing basis for rates on cast-iron pipe and pipe connections, in carloads, from Chattanooga, Tenn., and a number of Alabama points, including Birmingham, to various destinations in Montana, and to apply combination rates in lieu thereof. The lowest combinations make on St. Louis, Mo., and are applicable via Minnesota Transfer, Minn., and Mississippi River crossings. They are from 40 cents to \$1.20 higher than the rates now available. Upon protest of the Birmingham District, Iron and Steel Traffic Managers' Association, on behalf of the United States Cast Iron Pipe & Foundry Company and certain other industries, the operation of the schedules was suspended until January 31, 1922. Rates are stated in amounts per net ton.

The customary basis for rates from the east and southeast to Montana is the lowest combination on St. Louis, Chicago, Ill., Missouri River, or St. Paul, Minn., subject to the Spokane, Wash., rates as maxima.

On January 1, 1916, rates were higher to St. Paul than to Omaha, Nebr., the point upon which the lowest combination could be made, and therefore the aggregates of the rates to and beyond St. Paul were higher than when made on Omaha. In order to enable the carriers operating west of St. Paul to participate in the traffic, the tariffs were amended, effective on that date, so as to provide a basis for joint rates restricted in their application to routes over which

these joint rates should not exceed the aggregates of the intermediates. This basis consisted of the rates from St. Paul, "plus \$5.95 per ton of 2,000 lbs.," an arbitrary equal to the then existing rate to Omaha. As a result of general order No. 28 of the Director General of Railroads and the general increases of 1920, this arbitrary has been increased to \$9.865 and is now lower than the rate to Omaha because the latter was increased to \$6.85 on June 1, 1918, and under the corresponding general increases became, and now is, \$11.465. The result is that the joint rate is less than the aggregate of the rates to and beyond Omaha, St. Louis, or St. Paul. The schedules under suspension are intended to restore the normal basis of combination on St. Louis, so as to permit the traffic to move under the same rates through the different gateways.

The following table shows the basis now in effect for joint rates to Billings, a typical Montana destination, also the aggregates of the intermediates to and from St. Paul, Omaha, and St. Louis, respectively:

Basis now in effect to Billings— \$27.165 (\$9.865 plus \$17.30).

Aggregate of intermediates:

To and from St. Paul-----	29.70 (\$12.40 to St. Paul, plus \$17.30 beyond).
To and from Omaha-----	28.765 (\$11.465 to Omaha, plus \$17.30 beyond).
To and from St. Louis-----	28.365 (\$6.665 to St. Louis, plus \$21.70 beyond).

Witness for respondents testified that the Spokane rates, which are in many instances lower than the aggregates, are subnormal and reflect the level of the Pacific coast terminal rates originally depressed by water competition. To Butte, Mont., another representative destination, on traffic from these originating points the rate proposed is lower than the rates from Birmingham on wire and nails, and bar, plate, and sheet iron; and lower than that applied from Birmingham to Phoenix, Ariz., on cast-iron pipe, wire, nails, and bar, plate, and sheet iron, although the basis for joint rates from the east and southeast to Arizona and New Mexico is the lowest combination, subject to the coast or Phoenix rate as maximum. From Birmingham the distance by the short line to Butte is approximately 100 miles greater than to Phoenix.

Distance considered, the rates proposed compare favorably with the rates instanced on cast-iron pipe and on other iron and steel articles, such as structural iron, wrought-iron pipe, and pipe fittings, from Pittsburgh, Pa., Columbus, Ohio, and Chicago, Ill., to the same Montana destinations, although the carload minimum in connection with these other commodities is generally much higher than the minimum on cast-iron pipe. For illustration, respondents show that the average distance over representative routes to Butte is 2,144 miles from Birmingham and 2,109 miles from Pittsburgh,

and that the rate proposed to Butte is lower than any of the rates on the commodities named from Pittsburgh.

Cast-iron pipe and pipe connections are rated fifth class in western classification. To the respective Montana destinations the percentage relation of the rates proposed to the corresponding fifth-class rates is generally lower than in the case of the rates on these commodities from Pittsburgh and Columbus. Respondents' exhibits also show that, distance considered, the rates proposed are generally lower, and in some instances materially lower, than the rates from Pittsburgh, Columbus, and Chicago to Montana points on many other commodities rated fifth class.

We find that respondents have justified the schedules under suspension. An order will be entered vacating our order of suspension and discontinuing this proceeding.

64 I. C. C.

No. 12128.

ARMOUR & COMPANY

v.

CHICAGO & NORTH WESTERN RAILWAY COMPANY
ET AL.

Submitted June 13, 1921. Decided November 25, 1921.

Rate on canned condensed milk, in carloads, from Denmark, Wis., to Bangor, Me., found unreasonable. Reparation awarded.

Paul E. Blanchard for complainant.

Robert H. Widdicombe and *A. F. Cleveland* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by defendants to the report proposed by the examiner.

Complainant, a corporation at Chicago, Ill., by complaint filed January 24, 1921, alleges that the rate charged by defendants on a carload of canned condensed milk shipped on May 21, 1917, from Denmark, Wis., to Bangor, Me., was unjust and unreasonable. Reparation only is sought. The claim was filed informally December 11, 1920. Rates will be stated in cents per 100 pounds.

The limitation period in the act to regulate commerce expired prior to the filing of the claim and prior to the enactment of the transportation act, 1920. Section 206 (f) of the transportation act provides that the period of federal control shall not be computed as a part of the periods of limitation in claims for reparation to the Commission for causes of action arising prior to federal control. Defendants contend that the transportation act did not and could not constitutionally revive the cause of action. Following *Hirth-Krause Co. v. Director General*, 61 I. C. C., 350, and similar cases, this contention is not sustained.

The shipment weighed 47,200 pounds, and moved over the Chicago & North Western, the Ann Arbor, not a defendant here, Grand Trunk system, and the Maine Central, 1,453 miles. A commodity rate of 38.5 cents was applicable and charges in the sum of \$187.38 were collected. Apparently the shipment was overcharged \$5.66.

By exceptions to the governing official classification canned condensed milk, in carloads, was at the time of movement, and still is, rated fifth class. Complainant contends that the rate charged was unreasonable to the extent that it exceeded the contemporaneous fifth-class rate of 36.5 cents, which subsequently became applicable by cancellation of the higher commodity rate. *Hires Condensed Milk Co. v. P. R. R. Co.*, 38 I. C. C., 441, decided March 14, 1916, is cited. In that case the carload rates applicable under official classification on condensed milk, in cans, boxed, were held unreasonable, and fifth class with a 36,000-pound minimum was prescribed for the future. Numerous canned products were at the time of movement, and still are, accorded fifth-class rates from Denmark to Bangor.

Complainant also relies on *Oatman Condensed Milk Co. v. Director General*, 55 I. C. C., 228, wherein we found rates on canned condensed milk, boxed, in carloads, from Neillsville, Wis., to trunk line territory, unreasonable to the extent that they exceeded rates contemporaneously in effect on canned vegetables, boxed, in carloads, from and to the same points, and awarded reparation. But complainant erroneously asserts that at the time of movement canned vegetables, in carloads, from Denmark to Bangor were accorded the fifth-class rate of 36.5 cents. A commodity rate of 38.5 cents, or the same as that on canned condensed milk, was, in fact, applicable. At present the commodity rates on both products are the same as fifth class, while from Neillsville to Bangor the commodity rate is lower, and from other Wisconsin points to New York, N. Y.; Boston, Mass.; and Philadelphia, Pa., they have been the same as fifth class since prior to the movement herein considered.

No evidence was introduced by defendants.

We find that the rate applicable was unreasonable to the extent that it exceeded 36.5 cents per 100 pounds; that complainant made the shipment as described and paid and bore the charges thereon; that it has been damaged in the amount of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$15.10, with interest.

The Ann Arbor Railroad may join in the payment of reparation.

An appropriate order will be entered.

No. 10885.

INDIAN REFINING COMPANY, INCORPORATED,

v.

DIRECTOR GENERAL, AS AGENT, BALTIMORE & OHIO
RAILROAD COMPANY, ET AL.

Decided December 6, 1921.

Upon further consideration, and following *Sligo Iron Store Co. v. W. M. Ry. Co.*, 62 I. C. C., 643, rate applicable over the route designated by the shipper found to be 62.5 cents, and refund to that basis directed. Former report, 59 I. C. C., 246.

SUPPLEMENTAL REPORT OF THE COMMISSION.

BY THE COMMISSION:

In our original report in this case, 59 I. C. C., 246, we found that the combination rate of 72 cents applicable over the route of movement on a tank-car load of petroleum gas oil shipped June 4, 1919, from Lawrenceville, Ill., to Petersburg, Tenn., was not unreasonable or unduly prejudicial. The shipment did not move over the route designated by the shipper. We found that the rate applicable over the route so designated was a combination rate of 70.5 cents. The shipment moved over the higher-rated route under general order No. 1 of the Director General of Railroads, which required that routing designated by shippers be disregarded when speed and efficiency of transportation might be promoted. In accordance with our order of April 26, 1918, authorizing the participating carriers to adjust charges in such cases to the basis applicable over the route so designated, we directed the Director General, as Agent, to make refund to the basis of the rate of 70.5 cents. Rates shown herein apply per 100 pounds.

Upon petition of complainant for rehearing, in which it was urged that the rate applicable over the route designated by the shipper was 62.5 cents, we reopened the case on October 31, 1921, for further consideration upon the record as made.

The following table shows the factors of the combination rates over the route designated by the shipper in effect on June 24, 1918, and on June 4, 1919, the date the shipment moved:

64 I. C. C.

	June 24, 1918.	June 4, 1919.
	<i>Cents.</i>	<i>Cents.</i>
Lawrenceville, Ill., to Metropolis, Ill.....	17	² 12.5
Metropolis, Ill., to Columbia, Tenn.....	31	¹ 33.5
Columbia, Tenn., to Petersburg, Tenn.....	20	⁴ 24.5
Total.....	58	70.5

¹ Proportional commodity rate unlimited; as increased to 9 cents so limited as not to apply to shipments to Petersburg, Tenn.

² Local commodity rate; was 7.91 cents June 24, 1918.

³ Proportional commodity rate.

⁴ Local commodity rate.

The first and last factors of the 70.5-cent rate include the full 4.5-cent increase authorized by the Railroad Administration under its freight rate authority No. 96, dated July 11, 1918. That authority provided that the increase should apply on continuous through hauls, and accordingly the 33.5-cent factor, a proportional rate, includes but a portion of the increase. The tariff naming the 12.5-cent rate carried a note in accordance with freight rate authority No. 10 of the Railroad Administration, dated July 2, 1918, which read as follows:

When the total charges on a through shipment are constructed on combination of separately established rates applying to and from junction points, first determine the through combination of rates in effect on June 24, 1918, and then increase such through combination of rates $4\frac{1}{2}$ cents per 100 pounds.

In *Sligo Iron Store Co. v. W. M. Ry. Co.*, 62 I. C. C. 643, where one of the tariffs used in making combination rates on through shipments contained a rule that such rates would be subject to a single increase, we found that there was a holding out to the shipper of the rate so constructed which the carrier should protect.

Upon further consideration of the record, and following the case cited, we find that the rate applicable over the route designated by the shipper was 62.5 cents per 100 pounds. In accordance with our order of April 26, 1918, above referred to, James C. Davis, Director General, as Agent, should promptly refund to the party legally entitled thereto the difference, with interest, between the charges paid and those which would have accrued at the rate of 62.5 cents per 100 pounds.

No. 11894.

INDIANA RATES, FARES, AND CHARGES.

IN THE MATTER OF RATES, FARES, AND CHARGES APPLICABLE BETWEEN POINTS IN THE STATE OF INDIANA.

Submitted December 7, 1921. Decided December 12, 1921.

Upon further hearing, order entered pursuant to our findings in 60 I. C. C., 337, modified so as to except from its provisions the charge for transportation of live stock from the stockyards of the Belt Railroad & Stock Yards Company at Indianapolis, Ind., to the plant of Kingan & Company, Incorporated, at that place.

George Patterson Boyle and *C. E. Mallory* for petitioner.

Albert Baker and *J. J. Daniels* for Indianapolis Union Railway Company.

REPORT OF THE COMMISSION ON FURTHER HEARING.

MEYER, *Commissioner*:

In *Indiana Rates, Fares, and Charges*, 60 I. C. C., 337, we prescribed rates and charges for all freight service, except on coal for distances of 30 miles and less, for intrastate application in Indiana, which would remove undue prejudice found to exist against persons and localities outside the state, and remove the unjust discrimination found to exist against interstate commerce.

Upon petition of Kingan & Company, Incorporated, engaged in the meat-packing business at Indianapolis, Ind., the proceeding was reopened for further hearing for the purpose of determining whether the intrastate charge for the transportation of live stock from the stockyards of the Belt Railroad & Stock Yards Company, at Indianapolis, to petitioner's plant at that place, in effect prior to January 28, 1921, the date of our prior order, was related to any interstate charge in such manner as to contravene the provisions of the interstate commerce act.

In 1882 the Belt Railroad & Stock Yards Company, formerly the Union Railroad Transfer & Stock Yards Company, leased its railroad property to the Indianapolis Union Railway Company, and since then has only operated the stockyards. The Indianapolis Union, on which the stockyards are located, is controlled by the Cleveland, Cincinnati, Chicago & St. Louis Railway, hereinafter termed the Big Four, and the Pennsylvania Railroad. It files annual reports with us, and while it does not file tariffs, it concurs in 64 I. C. C.

tariffs filed by other carriers. Its facilities are also used by other trunk lines entering Indianapolis. Practically the entire operating revenue of the Indianapolis Union is derived from industries at Indianapolis for intraterminal or intraplant service. The railroads pay no fixed amount for the use of its facilities, but pay to the Indianapolis Union an amount equal to 7 per cent upon its appraised value, and in addition make up any operating deficit by monthly apportionment, according to the use of its facilities.

Petitioner's plant is on the Big Four. The live stock transported from the stockyards to petitioner's plant moves from points of origin in Illinois, Kentucky, Ohio, and Indiana, by steam railroad, by interurban electric line, and by truck, all consigned to commission men at the stockyards. The shipper pays the transportation charges for this movement. At the stockyards the commission men assort incoming consignments for purposes of sale. Those consignments coming in by truck or electric line are mixed with those coming in by steam rail, and the identity of the live stock, in so far as the point of origin is concerned, is lost. Petitioner buys the live stock at the stockyards from the commission men free of any prior transportation charges. The loading and unloading at the stockyards is done by the Belt Railroad & Stock Yards Company. The haul from the stockyards to petitioner's plant is by the Indianapolis Union with its own crew and power over its own tracks to a junction with the Big Four, 1.73 miles, and thence over the tracks of the latter company to petitioner's plant, 1.05 miles. This movement, practically within the city limits, is absolutely independent of any previous movement. Petitioner pays the charges for the movement from the stockyards, and does the unloading at its plant. That petitioner buys its live stock at the stockyards in competition with any person located at an interstate point does not appear of record.

As the revenue of the Indianapolis Union lessens any deficit resulting from its operation now assumed by certain interstate carriers, respondent urges that any reduction in the charge below the actual operating cost would result in a loss to carriers engaged in interstate commerce. The record does not show the actual operating cost.

We are of opinion and find that the charge for the transportation of live stock from the stockyards of the Belt Railroad & Stock Yards Company at Indianapolis to the plant of Kingan & Company, Incorporated, at that place, in effect January 28, 1921, did not, and for the future will not, cause any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce. Our order in this proceeding will be modified accordingly.

No. 10040.

U. M. SLATER, INCORPORATED, ET AL.

v.

SOUTHERN PACIFIC COMPANY, DIRECTOR GENERAL,
AS AGENT, ET AL.

Submitted December 8, 1920. Decided December 6, 1921.

1. Defendants' interstate carload rates on sheep in double-deck cars from certain points in Idaho, Oregon, Nevada, and California to San Francisco, Calif., and bay points, except from Kirk, Oreg., found not unreasonable. Reparation from Kirk, Oreg., awarded.
2. Basis of rate readjustment indicated.

Fred C. Peterson, Berkeley B. Blake, and Lucius L. Solomons for complainants.

J. F. Carey for Allan & Pyle; *Peter J. Gallagher* for estate of Henry Levey; *F. J. Coulter* for Western Meat Company, Oakland Meat & Packing Company, and Nevada Packing Company; and *R. A. Cahalan* for William Taaffe & Company, interveners.

A. B. Roehl and *Charles Moran* for Nevada-California-Oregon Railway Company.

Frank B. Austin, Harry T. Hennesy, H. W. Klein, C. W. Durbrow, Elmer Westlake, and Fred H. Wood for other defendants.

REPORT OF THE COMMISSION.

DANIELS, *Commissioner*:

Complainants herein are shippers and slaughterers of sheep. They market their products for the most part in San Francisco and Oakland, Calif., and other bay points. The traffic involved consists of interstate shipments from specified points in California, Idaho, Nevada, and Oregon. All rates and charges are stated in amounts per car and do not include the general increases of 1920. The specific issue relates to the double-deck rate on fat sheep. This rate, generally but not universally, is higher per car than the rate on fat cattle per car between the same points of origin and destination. Complainants and interveners contend that the double-deck rate on sheep, in so far as it exceeds, or, for the statutory period governing reparation, has exceeded, the rate per car on fat cattle for movements over the same routes between the same points of origin and destination, violates sections 1, 2, and 3 of the interstate com-

merce act; and, during federal control, violated section 10 of the federal control act.

The original complaint in this case was filed January 17, 1918. It was drafted apparently before federal control and did not name the Director General as a defendant. It set forth the facts complained of, and alleged that by reason thereof complainants had been subjected to rates and charges “(1) unjustly discriminatory in violation of Section 2. * * * and (2) unduly preferential and prejudicial in violation of Section 3 of said Act.” Among the preceding averments was the allegation that the defendants named therein charged “unfair, excessive, and unreasonable rates,” but no specific violation of section 1 was alleged. As late as June 9, 1919, shortly before the first hearing of the case, in an affidavit by complainants’ counsel in support of a motion to bring in the Director General as defendant, it was stated, *inter alia*, that the relief sought in this cause was twofold “(1) for reparation because of unjust charges for transportation, which are alleged to be unjustly discriminatory in violation of Section 2 of said Act, and (2) unduly preferential and prejudicial in violation of Section 3 of said Interstate Commerce Act.” When the case came on for its first hearing before a division of the Commission in San Francisco, on July 16, 1919, the defendants objected to the chief examiner’s statement of the issues involved, contending that no violation of section 1 was recited in the pleadings. The division ruled that, under the Commission’s liberal rules and practice relating to pleadings, the allegations of the complaint were broad enough to cover violation of section 1. The division also ruled that the amendment to the complaint bringing in the Director General as a defendant was tantamount to incorporating in the complaint an allegation that he had violated section 10 of the federal control act. The division while permitting certain interventions made at the first hearing ruled that the intrastate rates were not covered by the complaint and would be excluded from the case.

After the first hearing a proposed report was submitted to which all parties filed exceptions. Argument was had before the entire Commission on January 14, 1920. It appearing at this argument that uncertainty existed as to the points or the territory of origin involved, and that the Nevada-California-Oregon Railway complained of lack of adequate notice when the case was first tried, all parties were remanded to a subsequent hearing, and an amended and supplemental complaint was permitted, alleging in terms a violation of section 1 of the interstate commerce act and section 10 of the federal control act, specifying with greater definiteness the points of origin involved, and bringing in additional defendants. The second

hearing took place before an examiner at San Francisco on May 11 and 12, 1920. Again a proposed report was submitted, exceptions were filed, and argument had a second time before the entire Commission on December 8, 1920, upon the amplified record.

The complainants have, since filing their original complaint, transferred the emphasis of their complaint to the alleged violation of section 1. They rest squarely and exclusively on that section so far as their claim for reparation is involved, and invoke other sections only in so far as they may affect the rates to which they claim in the future to be entitled. They expressly concede that "it does not make any difference to the sheepman what rate is paid on cattle." Thus the issues of unjust discrimination and of undue prejudice are relegated by complainants themselves to a subordinate place.

The grounds on which complainants rest their contention that double-deck rates on sheep are and have been unjust and unreasonable are mainly the following: The per-car rates on cattle are presumptively just and reasonable maximum rates, because of their long duration; because they are not shown to have been made subnormal by competition; because in analogous cases we have found the cattle rates to be the appropriate measure of double-deck rates on sheep; because the cost of carriage of cattle per car is greater, or certainly not less, than the cost of carriage of sheep in double-deck cars; and because the value of fat cattle per car is greater than per car of sheep, double deck. Contending that the cattle rates per car are thus shown to be an appropriate measure of the maximum rates on sheep contemporaneously applicable, complainants urge that where the double-deck sheep rate is or has been in excess of the per-car cattle rate, it is demonstrated to be unreasonable, and the cattle rate affords the appropriate basis for reparation in the past and for the fixation of rates for the future.

Before analyzing the above contentions it will be well to sketch briefly the rate situation, and to recount certain changes which rates on cattle and sheep have undergone, respectively.

From the points in the territory of origin here dealt with, the basic rate on sheep per car has been the rate on sheep, single deck. The exception to the rule is on the Oregon Short Line, whose sheep rates to the destinations herein are apparently all on the double-deck basis. The Nevada-California-Oregon, hereinafter designated the N.-C.-O., is a narrow-gauge road with no double-deck cars, whose joint rates with its connections, the Southern Pacific and the Western Pacific, are based on the standard car rates of the two main-line carriers.

Originally, at least as far back as 1887, it appears that in this region the rate per car on sheep, single deck, was made quite generally

80 per cent of the contemporaneous rate on fat cattle per car. No explanation of this original relationship is vouchsafed. Whatever the original ratio, the ratio to-day is quite generally, but in varying degree, below the original 80 per cent of the cattle rate. Thus, at the date of the second hearing the single-deck sheep rate was 64 per cent of the cattle rate from Ogden and Salt Lake City, Utah, to San Francisco. From Portland, Oreg., it was 78 per cent, and from Reno, Nev., 57 per cent. In other words, the original relationship was variously disrupted over various routes by causes largely undisclosed of record; and the basic rates on sheep and cattle have long ceased to be closely related.

The rate per car of sheep, double deck, was ordinarily made a certain percentage of the rate per car single deck. The competition of the Western Pacific with the Southern Pacific and the effect of certain of our decisions tended to make the double-deck rate on sheep 170 per cent of the corresponding single-deck rate. Prior to increases under general order No. 28 this relationship prevailed generally from points reached directly by the Southern Pacific and the Western Pacific. The limitation of the increase to \$15 per car on live stock under said order disrupted this uniformity. From points on short-line connections the 170 per cent relationship was less frequently found.

In short, the original relationship between the basic cattle and sheep rates disappeared; but prior to general order No. 28 the double-deck sheep rate from main-line points had very generally become 170 per cent of the single-deck sheep rate. It should also be noted in passing that the net result of the various changes both in the cattle and sheep rates has been downward, the sheep rates generally being reduced from the original levels more than the cattle rates; and the double-deck rates generally more than the single-deck rates. Defendants assert that in no case has any rate here in issue been increased since January 1, 1910, until increased under general order No. 28. A check of the rate history from the chief points of origin tends to confirm this contention.

At the time of the second hearing the spread between the cattle rate per car and the double-deck sheep rate per car to San Francisco and bay points showed the following variations: From Ogden and Salt Lake City via both the Southern Pacific and the Western Pacific the rates were and still are the same. From points on the Oregon Short Line, via Ogden, the spread, sheep, double deck, over cattle ranged from \$3 to \$4 per car. From points between Ogden, or Salt Lake, and Reno, Nev., the spread, sheep, double deck, over cattle to San Francisco and bay points varied from nothing at all to about \$12 per car, the greater spread being from points in a median

region. Much the same may be said of the short-line connections except the N.-C.-O. At Reno the spread was reversed, being actually \$6 per car less on sheep, double deck, than on cattle. Certain points in the vicinity of Reno showed a similar spread in favor of sheep, or an equality in the rates per car. On the Westwood or Fernley branch of the Southern Pacific, the spread was in favor of sheep, double deck, by \$4 per car. From points on the N.-C.-O. a greater spread prevailed in favor of cattle per standard car, ranging from \$16 to \$42 per standard car. As previously stated, the N.-C.-O. is a narrow-gauge line, and conditions thereon warrant a separate consideration of its rates. These will be found in a later part of this report. Over the Shasta route of the Southern Pacific and over the Shasta route in connection with the line of the Oregon-Washington Railroad & Navigation Company, hereinafter termed the O.-W. R. & N., the spread in favor of cattle ranged from \$24 to \$45 per car. The Klamath Falls division of the Southern Pacific showed the most extreme, and parenthetically the least warranted, spread in favor of cattle per car, ranging from \$40 at Midland and Klamath Falls, Oreg., to \$80 at Kirk, Oreg.

From an exhibit of record it appears that for the year 1919 the Southern Pacific earned \$408,876 on 3,187 carloads of cattle from points in Nevada, Utah, Idaho, Oregon, and California to primary California markets, or an average of about \$122 per car; and \$166,487 on 1,663 cars of sheep (1,043 single deck and 620 double deck), or about \$101 per car. The respective distances are not given of record, but apparently the average haul of cattle per car is longer than the average haul of sheep. Of cars moved, about 66 per cent was of cattle; and of the total revenue more than 71 per cent was derived from cattle.

Before analyzing complainants' contentions hereinbefore summarized it is necessary to advert to the fact that while in terms the complaint relates to rates on sheep in double-deck cars, the complaint essentially has to do with double-deck rates on sheep rather than rates on sheep actually moved in double-deck cars. Shippers quite generally order double-deck cars. The Southern Pacific and the Western Pacific each own about 100 such cars, but are obligated, where they furnish single-deck cars for their own convenience, to charge the double-deck rates. More single-deck cars than double-deck cars are used in the transportation of sheep.

Reverting to complainants' bases for positing the unreasonableness of the double-deck sheep rates, we shall consider in succession the following: (1) rates per car on cattle, because of their long duration, carry a presumption of being just and reasonable maximum rates; (2) they have not been depressed by competition to a

subnormal level; (3) they have been found by us in analogous cases to be the appropriate measure or standard of double-deck sheep rates; (4) they cover costs of carriage greater than those involved in movements of sheep, double deck; and (5) they are compensatory for carrying live stock of greater value than sheep in double-deck cars.

As recited above, the basic sheep and cattle rates have long ceased in this region to bear to each other any recognized or uniform relationship. Since the original basic rates parted company, it can not be said that the cattle rates have in any marked degree—perhaps in any degree—shown greater stability than the basic sheep rates. Complainants themselves in meeting the allegation that competition has played upon cattle rates more intensively than upon sheep rates, assert that changes in cattle rates have been no more frequent than in sheep rates; and that ordinarily both have, of late years, changed seldom and then concurrently. From Ogden, changes in cattle rates and in single-deck sheep rates have since 1887 varied concurrently, the reductions in the latter being the more pronounced. The same is true from Reno, and—with the exception of any marked differences in the respective rate decreases—from Portland. The evidence of record does not sustain the view that the cattle rates have prevailed longer or have been more stable than the basic rates on sheep, single deck, although the double-deck sheep rates have shown more frequent changes than either, having been at various times 200, 190, and 170 per cent of the sheep rates, single deck. Where two commodities, now admittedly noncompetitive, have long ceased to bear any common or recognized relationship, and where the basic rates upon both show no appreciable difference in stability or duration, the presumption that the rates applicable to one of the two fixes a reasonable maximum standard for the other is not convincing.

The conclusion just reached makes unnecessary any extended examination of the conflicting evidence as to how far cattle rates per car have been subjected to competitive forces to reduce these rates to a subnormal basis. Defendants introduced evidence tending to show that the possibility of driving cattle for longer distances than sheep had induced concessions in the cattle rates to meet the cross-country competition of rival carriers. While the evidence might have been more explicit, there seems, on the whole, reason to believe that this consideration explains in part the relatively lower rates on cattle, per car, from N.-C.-O. points, where the competition of the McCloud River Railroad and other near-by carriers was apprehended or experienced. It also appears that the Nevada Copper Belt was similarly induced to make lower rates on cattle by reason of the

possibility of driving to the Southern Pacific direct. Similarly on the Fernley branch of the Southern Pacific the same causes appear to have been operative. Except for these instances there appears no convincing evidence of cattle rates having been influenced by competition to a greater extent than were sheep rates. Over the Shasta route of the Southern Pacific there seems to have been no influence of this kind in effect, although the competition of the Klamath Falls branch is alleged by the N.-C.-O.

Complainants naturally attach great significance to our previous decisions, holding that double-deck car rates on sheep should not exceed rates per car on fat cattle. Among the cases cited are *Investigation of Alleged Unreasonable Rates on Meats*, 22 I. C. C., 160; *Corn Belt Meat Producers' Asso. v. C., B. & Q. R. R. Co.*, 17 I. C. C., 533; *American National Live Stock Asso. v. S. P. Co.*, 26 I. C. C. 37, 32 I. C. C., 515; *American National Live Stock Asso. v. O. S. L. R. R. Co.*, 43 I. C. C., 247.

In the case first cited, 22 I. C. C., 160, a general readjustment was made of rates from points in New Mexico, Texas, and Oklahoma to Wichita, Kans., Oklahoma City, Okla., and Fort Worth, Tex. We there found that the same rates and minima should apply on fat cattle in single-deck cars as on hogs, sheep, or goats in double-deck cars. The report contains no discussion of the merits of or the reasons for this finding.

It is to be noted, in this review of various reports affecting the comparative rates on cattle and sheep, double deck, that in *Maricopa County Commercial Club v. S. P. Co.*, 22 I. C. C., 429, decided two months later than the case just canvassed, we prescribed from Phoenix, Ariz., to Los Angeles, Calif., on cattle, rates of \$95 per car, and on sheep, double deck, \$110.50 per car. It is also to be observed that in *Carstens Packing Co. v. S. P. Co.*, 23 I. C. C., 236, while we found that, so long as rates are provided for double-deck cars, the tariffs should provide definitely that where a double-deck car is ordered and two single-deck cars are furnished, the charges will be assessed upon the basis of the double-deck car ordered, we also remarked that:

It is well known that single-deck stock cars are available for shipments of lumber, coal, and other commodities, while double-deck cars can not be so used to good advantage. Double-deck cars are not, therefore, of such general utility as are single-deck cars.

In the *Corn Belt Meat Producers' Association Case*, *supra*, the rates on live stock from Iowa to Chicago, Ill., had previously been adjusted following an opinion by us. We found that in states adjoining Iowa the defendants applied the fat-cattle rate per car to sheep, double deck, and declared that no good reason existed why less favorable rates should apply from Iowa than from and in the adjoining

states to Chicago. The report, however, required reasonable notice to be given by the shipper desiring to use double-deck cars.

In the *American National Live Stock Association Case*, *supra*, we had previously reduced the cattle rate from Phoenix to Los Angeles, and we there assumed that the live stock rates should bear the same relation to class rates as in Oklahoma. Following our action in the *Corn Belt Meat Producers' Association Case*, we first found that rates per car on fat cattle and sheep, double deck, should be the same, and prescribed a distance scale of maximum reasonable rates.

Finally in the *American National Live Stock Asso. v. O. S. L. R. R. Co.*, *supra*, we declined to prescribe from Utah, Idaho, and Oregon to Los Angeles the same scale as prescribed in 26 I. C. C., 37, and in 32 I. C. C., 515; we found the rates on cattle not unreasonable, and by reason of defendants' admission that their rates in cars, double deck, should not exceed the rates per car on cattle, found higher rates on sheep, double deck, unreasonable.

This analysis of cases relied on by complainants falls short of sustaining the contention that we have held without exception that cattle rates per car fix the maximum reasonable rates for sheep, double deck. In one instance we specifically prescribed higher rates on the sheep than on cattle. In all cases there had been a finding as to the maximum reasonable rate on cattle, and in the last case cited, where the carriers admitted that their cattle rates were reasonable to apply on sheep, double deck, we so held.

In all of these cases it would appear that the double-deck equipment was in excess of that available in the present case. Thus, in *American Live Stock Asso. v. S. P. Co.*, 32 I. C. C., 515, it appeared that the Santa Fe owned 1,000 double-deck cars. It can not be doubted from the evidence of record herein that double-deck equipment is not conducive to economy of operation. It is really specialized equipment with a 100 per cent empty-return load, whereas a test shows the loaded mileage of single-deck cars exceeds their empty mileage by but 42 per cent. Defendants contend that the acquisition of more double-deck cars is poor economy. We are not inclined to set up our judgment against that of the carriers on this point without more elaborate information than this record affords, or to urge upon them the desirability at this time of augmenting this variety of special equipment.

Inasmuch as the decisions above cited were made in view of the particular circumstances there existing, but not shown to be wholly comparable with or wholly analogous to those herein disclosed, we are of opinion that the cases cited do not suffice to dispose of the issue here raised.

Complainants emphasize the fact that the rates on cattle are deemed by the carriers compensatory for the carriage of freight more

costly to handle due to its greater weight per car, and involving a greater service to shippers by reason of the greater value of cattle per car than sheep, double deck. It is urged with force that whatever difficulties of transportation may be encountered over the Sierra Nevada and the Shasta routes are common to sheep and cattle alike; and that when all the special incidents of expedited live stock service are allowed for, it still remains true that the movement costs are greater as regards carloads of cattle than as regards double-deck carloads of sheep. The exceptional conditions on the N.-C.-O. afford the one striking exception to this rule.

There has been shown one somewhat greater expense attaching to the transportation of sheep than of cattle. It takes somewhat longer to load one car of sheep, double deck, or two single-deck cars than to load one car of cattle. The evidence is conflicting as to the difference in time, but from 10 to 15 minutes per car would appear to be not uncommon. In not over 15 per cent of the cases are sheep cars found already loaded when the train arrives, so that there is a greater but an indeterminate part of the wages of the train crew while waiting fairly attributable to the slower loading of sheep.

Of much greater importance, however, is the fact that the movement of sheep is to a large extent in single-deck cars, although on rates applicable to sheep in double-deck cars. As a matter of fact the weight factor involved in the greater number of instances is the movement of approximately 26,000 pounds of cattle plus the weight of one car, as against the movement of approximately 20,000 pounds of sheep plus the weight of two single-deck cars. From an exhibit submitted by the Southern Pacific for 1919 it appears that, excluding single-deck cars specifically ordered, 629 double-deck cars of sheep were moved, as against 922 cars, single deck, although the latter moved on double-deck orders and at double-deck rates. Allowing 15 tons for the tare weight of a single-deck car, and 15.75 tons for the tare weight of a double-deck car, the movement of sheep, counting by decks and not by cars, involved hauling 32 tons approximately per double deck as against 28 tons per car of cattle.¹

¹ The computation is as follows: 620 double-deck cars of sheep moved; 920 single-deck cars of sheep moved on double-deck orders and at double-deck rates:

620 cars, double deck, at 15.75 tons per car-----	9,765 tons, tare weight.
620 cars, double deck, with loads 10 tons per car-----	6,200 tons, lading weight.
Total-----	15,965 tons, total weight.
920 cars, single deck, at 15 tons per car-----	13,800 tons, tare weight.
920 cars, single deck, with loads 5 tons per car-----	4,600 tons, lading weight.
Total-----	18,400 tons, total weight.
620 cars, double deck (1,240 decks), plus 920 cars single deck (920 decks), give a total of 2,160 decks.	

Total weight of 620 double-deck cars plus 920 single-deck cars (including lading) equals 34,365 tons; 34,365 divided by 2,160 equals 16 tons per deck.

A double-deck load involved an average weight of 32 tons.

A car of cattle (car and lading) had an average weight of 28 tons.

Complainants urge that the voluntary nature of this disability of defendants in being undersupplied with double-deck cars estops them from urging the necessity of moving sheep so largely in single-deck cars. But, as noted above, if there exists doubt from a traffic standpoint as to the propriety of augmenting a supply of specialized equipment, we must allow considerable weight to the defense that, as the traffic in fact moves and must move, if an unwarranted outlay is to be avoided, the weight moved, considering both car and contents, would on the average warrant some spread in the double-deck rates on sheep over the cattle rate per car.

So far as the respective values at point of origin of the average car of fat cattle and the double-deck load of fat sheep are concerned, the evidence is conflicting. It appears on the whole that the cattle are of the greater value, but probably not over \$500 per car. On the other hand it would appear that sheep in this region since 1883 have increased in value relatively much more than cattle, and since 1916 down to the time of the first hearing this has been particularly noticeable. One of complainants' witnesses testified that the purchase price of sheep had more than doubled in the last few years.

The grounds upon which complainants depend to show the unreasonableness of the rates on sheep embrace also certain comparisons of the car-mile revenue obtaining from similar traffic over other routes. The Arizona scale, established in 26 I. C. C., 37, yields lower revenue per car-mile. Complainants concede that this scale is lower than would be warranted in the instant case, although they urge that the excess revenue per car-mile on cattle here obtaining should suffice for the carriage of sheep, double deck. Similarly, rates per car for certain hauls of cattle and sheep, double deck, in Oregon, from Idaho to Nevada, and from Oregon to Utah and to Los Angeles are cited in comparison with those here in evidence, although no information whatever is vouchsafed as to the comparative conditions under which the respective services are rendered.

In default of more persuasive or convincing proof of the intrinsic unreasonableness of the rates on sheep assailed herein, we are thrown back upon a scrutiny of the earnings yielded by this traffic in the light of the circumstances disclosed of record under which the traffic moves. Cost figures are not in evidence except in the case of the N.-C.-O. From Beowawe, Nev., the rate on sheep per car, double deck, prior to general order No. 28 was \$113.05. The distance to San Francisco via the Western Pacific is 619 miles. The spread of sheep rates, double deck, over cattle rates was \$12.55, or about the maximum for this region between Reno and Ogden to bay points. The car-mile revenue is 18.26 cents. Considering the character of the service rendered, with the attendant expense, it can hardly be

said that the earnings are unreasonable. Even as increased under general order No. 28, the car-mile earnings reach only 20.7 cents. From Huntington, Oreg., 1,147 miles distant via Portland, the car-mile revenue for the joint haul was 20.2 cents, increased under general order No. 28 to about 23 cents, and subsequently reduced to 21.5 cents. From Baker, Oreg., the analogous yields were 21.1 cents, 23.9 cents, and 22.4 cents. From Portland, 746 miles from San Francisco, the car-mile yields prior and subsequent to general order No. 28 were 20.3 cents and 22.3 cents, respectively.

From points nearer in origin, and from branch lines and independent connecting lines, the car-mile revenue on sheep both before and after June 25, 1918, runs higher: From Grants Pass, Oreg., 449 miles, 31.4 cents and 34.7 cents, respectively; from Reno, 243 miles, 29 cents and 35 cents, respectively; from Libby, Nev., on the Westwood branch of the Southern Pacific, 296 miles, 27.5 cents and 32.6 cents, respectively, in both of the last two instances lower than the earnings on cattle per car-mile; from Carson City, Nev., on the Virginia & Truckee, 274 miles, the rate being the combination over Reno, 33 cents and 40.5 cents. On the Klamath Falls branch the car-mile revenues are apparently the highest; from Midland and Klamath Falls the rates are blanketed and the yields are 35.7 cents and 39.3 cents for a distance of 409 miles from Klamath Falls; from Chiloquin, Oreg., 436 miles, 38.2 cents and 41.6 cents; from Kirk, 450 miles, 46.9 cents and 50.2 cents. The rates from Kirk are admittedly out of line, unreasonable, and excessive, and should not exceed those from Chiloquin. While the car-mile earnings on this branch appear high, the operating conditions are adverse, a maximum grade of 3.7 per cent being encountered on the northbound movement. The revenue on sheep from such independent connections as the Nevada Copper Belt, the Virginia & Truckee, and the N.-C.-O. appears somewhat high, but the testimony shows their financial condition to be precarious, their live-stock traffic to constitute in cases as high as 50 per cent of their total traffic, and their divisions apparently not niggardly. When in addition to the car-mile earnings, it is remembered that a carload of sheep, double deck, is worth approximately \$2,000, and the average revenue per car is not greatly in excess of \$100, or 5 per cent of the value of the load, it is impossible to find on this record that the rates assailed were or are unreasonable. We so hold, and the claims for reparation, except from Kirk, are accordingly denied.

The exceptional conditions found on the N.-C.-O. render necessary a separate treatment of the rates on sheep and cattle originating thereon. Its northern terminus is Lakeview, Oreg. It connects with the Southern Pacific at Wendel, Calif., 155 miles distant, and

at Hackstaff, Calif., with the Western Pacific, 17 miles farther distant. This narrow-gauge road traverses a region largely desert, of small traffic density, over a circuitous line and encounters several stiff adverse grades of 2 per cent. Its stock cars are all single deck, 30 feet in length, it being impossible to operate double-deck cars because of the high center of gravity thereon. Its stock cars, 64 in number, stand idle about eight months in the year. It requires one and a half of its cars to fill one standard-gauge car with cattle, and three of its cars to fill one double-deck standard-gauge sheep car. At its junctions with its standard-gauge connections transfer of lading is necessary. It connects with the Westwood or Fernley branch of the Southern Pacific, and shipments via this route are interstate, moving a short distance in Nevada, whereas, except from Lakeview, its joint route with the Western Pacific is wholly intrastate in California. From the train sheets of the N.-C.-O. an exhibit was presented showing the out-of-pocket expenses for moving a standard carload of cattle to be \$42.91 as against \$55.12 for moving a double-deck standard carload of sheep. Practically 50 per cent of its traffic is live stock, the remainder being mostly lumber. It has incurred deficits since 1916. By reason of having to move three of its narrow-gauge cars to fill one standard double-deck car with sheep, it shows that it moves 33 per cent more weight, including cars and lading, to fill a double-deck car of sheep than to fill a standard-gauge car of cattle. Its divisions appear to be generally in excess of its local rates. Its exceptional situation and exceptional circumstances make rate comparisons per mile with standard-gauge movements wholly out of the question. We find that rates on sheep originating thereon and moving via the Southern Pacific to San Francisco and bay points were not and are not unjust or unreasonable.

So far as violations of sections 2 and 3 of the interstate commerce act are alleged, they have been abandoned as grounds for showing damage entitling complainants or interveners to reparation. It remains, however, to indicate their bearing on the anomalies which the rate structure here disclosed indicates. If the \$3 or \$4 spread of double-deck sheep rates over cattle rates from points on the Oregon Short Line via Ogden to San Francisco Bay points were alone under consideration, it might with plausibility be argued that the slightly greater time involved in loading the sheep warranted the difference. Even the excess spread, generally not over \$12, and frequently lower from points of origin in Utah and Nevada on the two main lines or their short-line connections, the Nevada Northern, the Nevada Copper Belt, and the Virginia & Truckee, finds some support in the necessity of the frequent or even the general use of single-deck cars on whose lading the double-deck rates apply. On the N.-C.-O.,

as we have seen, special conditions of actual cost warrant a spread, sheep, double deck, over cattle. But on the Shasta route and on the Shasta route jointly with the O.-W. R. & N., the alignment of sheep rates, whether considered by themselves or with reference to the cattle rates, is illogical, improper with reference to distance, and indicative of a traffic policy not responsive to the reasonable claims of shippers or localities. Thus, at the time of the second hearing and long prior thereto, the sheep and cattle rates to bay points were blanketed, but on different levels, from Portland to Eugene, and similarly from Cottage Grove to Riddle. More indefensible still, the spread in favor of cattle under sheep, double deck, was \$33.50 from the more distant group, and \$45 from the less distant group. From Grants Pass, south of the lower group, the spread rises to \$47, and from the next group to the south the spread drops to \$24. The traffic policy of the Southern Pacific is reflected in the fairly uniform spread of \$33 to \$35 from such Oregon points of origin as Pendleton, Huntington, Bend, and Shaniko. Based on the respective costs of service as indicated by gross weight moved, on value of lading and other incidents of carriage, the spread of the double-deck sheep rate from main-line points should not exceed 10 per cent of the cattle rates per car. The propriety of a distance scale, except for special conditions of severe mountain hauls, might well be considered. On branch lines, except at Kirk, we are not prepared to indicate general changes except as those noted above may be equally applicable to similar conditions prevailing thereon. We shall expect the defendants, Southern Pacific Company and O.-W. R. & N., in so far as the latter makes joint rates with the Southern Pacific, to conform their rates on sheep, and where necessary their rates on cattle, to the suggestions hereinbefore outlined.

The relationship indicated is the maximum difference which, under the record herein, appears warranted as to the rates here in question upon the Southern Pacific lines north of San Francisco and its connections via Portland. Quite generally in the states of Oregon and Washington, and the inland empire no difference exists between the rates on cattle and sheep in double-deck cars, and the double-deck sheep rate is applied when double-deck cars are ordered and two single-deck cars are supplied for the carriers' convenience. Where this situation exists, it is not our intention to suggest that any change be made in such relationships. The reasonableness and propriety of such existing equality in rates, and the circumstances and history of such rates are not before us.

On shipments from Kirk, Oreg., to San Francisco Bay points we find that rates exacted within the statutory period in excess of contemporaneous rates from Chiloquin, Oreg., to the same destinations,

were unjust and unreasonable; that complainants or interveners, in so far as they have made shipments from Kirk to bay points, have paid and borne rates unjust and unreasonable and have been damaged to the extent the rates paid exceeded the rates contemporaneously applicable from Chiloquin to bay points. A statement should be filed under rule V of the Rules of Practice and thereupon an award of reparation will be considered.

No. 11815.

ELM CITY LUMBER COMPANY

v.

SEABOARD AIR LINE RAILWAY COMPANY, DIRECTOR
GENERAL, AS AGENT, ET AL.

Submitted March 14, 1921. Decided December 6, 1921.

Demurrage charges collected at Petersburg, Va., on three carloads of lumber found unlawful. Refund directed.

Robert D. Burbank for complainant.

Henry Thurtell for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

By DIVISION 3:

Exceptions were filed by defendants to the report proposed by the examiner.

Complainant, a corporation engaged in the wholesale lumber business with offices at New Bern, N. C., alleges that demurrage charges collected at Petersburg, Va., on three carloads of lumber shipped during March, 1918, from Perrot, S. C., to Petersburg, were unreasonable and illegal.

The shipments were consigned to complainant at Petersburg, at which point it has no office. The bills of lading issued for these shipments carried the notation, "A. C. L. delivery." The lumber had been sold by complainant to the Virginia Trunk & Bag Company, hereinafter referred to as the bag company, whose plant has no sidetrack connections and is nearer to the team tracks of the Atlantic Coast Line, hereinafter termed the Coast Line, than to those of the Seaboard Air Line, hereinafter termed the Seaboard.

Immediately after each of the cars moved complainant notified the bag company to give the Coast Line freight agent at Petersburg disposition orders. The shipments moved from Perrot to Petersburg over the Seaboard. The rate over the Seaboard locally also applied as a joint rate over that line in connection with the Coast Line, the route specified in the bill of lading. The Seaboard did not turn the shipments over to the Coast Line, but held the cars and sent postal-card notice, addressed to complainant at Petersburg, stating that the shipments were ready for delivery. It is said that these notices were not delivered. There is some evidence of inquiry for delivery directions having been made of the Coast Line by an employee of the Seaboard. After an exchange of telegrams and letters between the agent of the Seaboard, the consignor of the shipments, and complainant, delivery was made from the team tracks of the Seaboard instead of from those of the Coast Line. Demurrage charges in the sum of \$230 were collected. The measure of these charges is not assailed, complainant's sole contention being that no demurrage charges accrued.

As above stated, the rate applicable to the shipments included delivery on the tracks of the Coast Line at Petersburg. In several similar cases we have condemned the assessment of demurrage charges on shipments withheld from the carrier named in the bill of lading as the delivering line.

We find that the demurrage charges assailed were unlawfully collected. The record does not show that the complainant paid and bore these charges. Upon receipt of satisfactory proof that refund of these charges has been made to the party entitled thereto an order dismissing the complaint will be entered.

No. 11619.¹

ACME CEMENT PLASTER COMPANY

v.

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY, AND
DIRECTOR GENERAL, AS AGENT.

Submitted March 16, 1921. Decided November 25, 1921.

Upon complaint assailing the carload minima applicable on crushed gypsum rock from Gladys, Okla., to Cape Girardeau, Mo., and from Grand Rapids, Mich., to Hannibal and Prospect Hill, Mo., *Found:* That the evidence adduced affords no basis for determining whether the tariff minima can be loaded, and that upon the record made the carload minima assailed are not unreasonable. Complaint dismissed.

Sam H. West and M. N. Sale for complainant.

A. T. Sullivan for defendants in No. 11619.

Norman F. Crawford for Pere Marquette Railway Company.

John F. Finerty, Alex. M. Bull, and E. C. Blanchard for Director General of Railroads, as Agent.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

By DIVISION 3:

Exceptions were filed by the Director General of Railroads, as Agent, to the report proposed by the examiner. We have reached conclusions differing from those recommended by him.

Complainant, a corporation engaged in the production of crushed gypsum rock at Gladys, Okla., Grand Rapids, Mich., and other points, alleges that the charges assessed on carload shipments of crushed gypsum rock from Gladys to Cape Girardeau, Mo., and from Grand Rapids to Hannibal and Prospect Hill, Mo., were unreasonable to the extent that the minimum weights on which charges were based exceeded the actual weights of the shipments. We are asked to award reparation and to prescribe reasonable minima for the future. Rates will be stated in cents per 100 pounds.

¹ This report also embraces No. 11621, *Same v. Pere Marquette Railway Company, Director General, as Agent, et al.*, and No. 11621 (Sub-No. 1), *Same v. Pere Marquette Railway Company, Director General, as Agent, et al.*

Gypsum rock is used as an ingredient of cement and in the manufacture of wall plaster. A shipment weighing 50,200 pounds moved from Gladys to Cape Girardeau on November 11, 1919, over the St. Louis-San Francisco, hereinafter called the Frisco. Charges of \$96 were collected at the applicable rate of 16 cents, minimum 60,000 pounds. In the same month a shipment weighing 80,700 pounds moved from Grand Rapids to Hannibal over the Pere Marquette and the Wabash; and a shipment weighing 81,400 pounds moved from Grand Rapids to Prospect Hill over the Pere Marquette and the Chicago, Burlington & Quincy. The two latter shipments were loaded in cars with marked capacities of 100,000 pounds, and charges of \$139.50 were collected on each at the applicable rate of 15.5 cents, minimum weight 90 per cent of marked capacity of car. Complainant contends that the cars were loaded to capacity; that it was impossible to load therein the minima provided; and that reparation should be awarded to the basis of the actual weights of the shipments.

Complainant does not assail the applicable rates. It insists that each of these cars was loaded to full visible capacity. Its witness testified that the weight of crushed gypsum rock is never less than 75 nor more than 85 pounds per cubic foot, and averages 80 pounds.

Defendants instanced four other carload shipments from Grand Rapids to interstate destinations made by complainant at approximately the time when these shipments moved. The data shown as to car loading are—

Cubic capacity level full.	Marked capacity.	Scale weight.	Proportion of marked capacity.	Average weight per cubic foot.
	<i>Pounds.</i>	<i>Pounds.</i>	<i>Per cent.</i>	<i>Pounds.</i>
824 cubic feet.....	100,000	94,400	94.4	114.6
729 cubic feet.....	80,000	84,400	105.5	115.8
850 cubic feet.....	100,000	98,000	98	115.3
820 cubic feet.....	100,000	98,100	98.1	119.6

Giving full effect to the testimony of complainant's witness that the cars under consideration were loaded to full visible capacity, and also that the average weight of crushed gypsum rock is 80 pounds per cubic foot, the following appears:

From—	To—	Cubic capacity.	Average weight at 80 pounds per cubic foot.	Actual weight.
		<i>Feet.</i>	<i>Pounds.</i>	<i>Pounds.</i>
Gladys.....	Cape Girardeau.....	923	73,840	50,200
Grand Rapids.....	Hannibal.....	820	65,600	80,700
Do.....	Prospect Hill.....	893	71,440	81,400

These figures can not be reconciled. The estimated weight represents 147.1, 81.3, and 87.8 per cent, respectively, of the actual weights. If the average weight per cubic foot of the four other shipments were applied, no difficulty would be experienced in reaching the required minima. Complainant asserts that the scale weights are inaccurate, but offers nothing in support.

An exhibit was introduced by defendants showing data in connection with shipments made from Grand Rapids to various destinations during November and December, 1919. The actual weight of each of the 50 shipments exhibited was 90 per cent or more of the marked capacity of the car used, and of 32 thereof was more than 100 per cent.

The exhibits demonstrate that the marked capacity bears no consistent relation to the cubic capacity. Taking the cars having a marked capacity of 100,000 pounds as illustrative, it is observed that their cubic capacities range from 824 to 1,818 feet. Despite these wide variances, the minimum in each instance is 90,000 pounds. It may be that in some cases a car with a low cubic but high marked capacity could not be loaded to the tariff minima and that appropriate provision should be made for such contingencies. In *Armour Grain Co. v. Director General*, 58 I. C. C., 306, we found that unless carriers are able to furnish upon reasonable request cars which will hold the minima provided by their tariffs, it can not be said that the minima are reasonable. We are unable to determine from the evidence adduced whether the applicable minima are unreasonable.

Upon this record we are of opinion and find that the carload minima assailed are not unreasonable. The complaint will be dismissed.

No. 11901.

L. A. NORRIS

v.

TEXAS & PACIFIC RAILWAY COMPANY ET AL.

Submitted May 6, 1921. Decided December 5, 1921.

Rates on pipe and oil-well machinery, in carloads, from Scottsville, Tex., to Mansfield, La., found unreasonable. Reasonable maximum rates prescribed and reparation awarded.

L. F. Daspit for complainant.

George Thompson, L. M. Hogsett, Robert Thompson, and George Reeves for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by defendants to the report proposed by the examiner.

Complainant alleges that the rates charged on a carload of pipe and a carload of oil-well machinery shipped on April 26, 1920, from Scottsville, Tex., to Mansfield, La., were unreasonable and unduly discriminatory. We are asked to prescribe just and reasonable rates and to award reparation. Rates will be stated in cents per 100 pounds.

The shipments moved over the Texas & Pacific to Mansfield Junction, La., 54.8 miles, and the Mansfield Railway & Transportation Company beyond, 4 miles. The rates charged were 59 cents, minimum 36,000 pounds, on the pipe, and 63 cents, minimum 40,000 pounds, on the machinery. These rates were combinations of fifth-class and class-A rates, respectively, to Mansfield Junction, and the local rates beyond. Joint rates of 86.5, fifth class, and 90 cents, class A, were applicable, and the shipments were undercharged. Complainant contends that the rates assailed were unreasonable to the extent that they exceeded 29 and 30.5 cents, respectively.

When the shipments moved the fifth-class and class-A rates for joint line hauls of 58.8 miles, based on the scale prescribed in *Railroad Commission of Louisiana v. A. H. T. Ry. Co.*, 48 I. C. C., 312, increased pursuant to general order No. 28 of the Director General 64 I. C. C.

of Railroads, were 29 and 30.5 cents. The combination class rates to and from Shreveport over the Texas & Pacific and Kansas City Southern were 39 and 41 cents. Commodity rates of 42.5 and 72.5 cents applied westbound from Mansfield to Scottsville.

We find that the rates applicable were, are, and for the future will be unreasonable to the extent that they exceeded or exceed 29 cents on pipe and 30.5 cents on oil-well machinery, subject to the increases authorized in *Increased Rates, 1920*, 58 I. C. C., 220; that complainant made the shipments as described, and paid and bore the charges thereon; that he has been damaged in the amount of the difference between the charges paid and those that would have accrued at the rates herein found reasonable; and that he is entitled to reparation in the sum of \$238 with interest. Defendants should waive collection of the outstanding undercharges.

An appropriate order will be entered.

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No. 11953.

E. I. DU PONT DE NEMOURS & COMPANY

v.

DIRECTOR GENERAL, AS AGENT, RARITAN RIVER
RAILROAD COMPANY, ET AL.

Submitted June 23, 1921. Decided December 7, 1921.

Charges collected on six carloads of wet nitrocellulose shipped from Hopewell, Va., to Haskell, N. J., and reconsigned to Parlin, N. J., found not unreasonable or otherwise unlawful. Complaint dismissed.

Harvey S. Farrow and *V. S. Thomas* for complainant.

John F. Finerty, Alexander M. Bull, E. C. Blanchard, and J. C. Brook, for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, and CAMPBELL.

BY DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner and the case was orally argued.

Complainant is a corporation manufacturing explosives, with principal office at Wilmington, Del. By complaint filed November 6, 1920, it alleges that defendants' failure to comply with its request to divert to Parlin, N. J., six carloads of wet nitrocellulose shipped from Hopewell, Va., to Haskell, N. J., November 12, 1918, resulted in the collection of charges which were unjust and unreasonable to the extent that they exceeded charges based upon the through rate of 55.5 cents from Hopewell to Parlin, plus a diversion charge of \$2 per car. We are asked to award reparation. Rates are stated in cents per 100 pounds.

The shipments moved to Haskell as originally routed over the Norfolk & Western; Atlantic Coast Line; Richmond, Fredericksburg & Potomac; Baltimore & Ohio; Philadelphia & Reading; Central of New Jersey; Lehigh & Hudson River; New York, Susquehanna & Western; and Erie. The request to divert to Parlin eliminated the three carriers last named from the routing and added the Raritan River.

Charges were collected at the applicable joint commodity rate of 60.5 cents to Haskell and the joint first-class rate of 37.5 cents from
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Haskell to Parlin, plus a diversion charge of \$2 per car. If the diversion had been effected a joint commodity rate of 55.5 cents would have been applicable from Hopewell to Parlin, plus the reconsignment charge. The rates are not assailed, but complainant asserts that it has been damaged in the amount of \$1,730.02, because of the higher rates applicable as a result of defendants' failure to comply with its request for diversion.

Complainant contends that defendants did not exercise reasonable discretion or employ all reasonable means in an effort to comply with its request, and that if such request had been telegraphed by the initial carrier to the Baltimore & Ohio or the Philadelphia & Reading at Philadelphia, where, under the routing instructions, the shipments would be interchanged by these carriers, instead of to its connection at Petersburg, Va., only 9 miles from point of origin, diversion could have been effected.

The position of defendants is that immediately upon receipt of the request for diversion they made every reasonable effort to divert the cars and went even further than their tariff provisions required.

Rule 4-C, N. & W. tariff I. C. C. 6294, effective when the shipments moved, provided as follows:

When diversion or reconsignment is requested after shipment has passed out of possession of this railway or when request is received too late for this railway to effect the change desired, such request will be transmitted to direct connecting carrier to which shipment was delivered, when the responsibility of this railway will end; and the shipments will be subject to rules of the carrier on whose rails the diversion or reconsignment is accomplished. * * *

The cars moved from Hopewell on the evening of November 12, 1918. The Hopewell agent received by telephone at 2.30 p. m. on the following day the request to divert the cars to Parlin, and to change the routing, and at 4.20 p. m. telegraphed the request to the general freight agent at Roanoke, Va., through which office requests for diversion are handled. This telegram was received at the telegraph office in Roanoke after office hours and was delivered on the morning of November 14. At noon of that day the general freight agent wired the agent for the Norfolk & Western at Petersburg, Va., and the agents for the Atlantic Coast Line and Richmond, Fredericksburg & Potomac, at Richmond, Va., requesting the diversion, but those agents replied that the cars had left their lines prior to receipt of the telegrams. The records of the Richmond, Fredericksburg & Potomac show that the Norfolk & Western's telegram was received at Richmond at 4.05 p. m. November 14, and was repeated to the Richmond yardmaster and the superintendent at Potomac Yard, Va. The agent for the Norfolk & Western was advised on November 15 that the cars had left Potomac Yard over the Baltimore & Ohio, the instructions to divert having been received too late to act upon. The Balti-

more & Ohio was then requested to make the diversion, but advised that the cars had been delivered to the Philadelphia & Reading at Philadelphia on November 15 before receipt of the request. The agent for the Norfolk & Western at Roanoke promptly telegraphed the Philadelphia & Reading and the Central of New Jersey requesting the diversion and stating that the cars had been delivered to the Philadelphia & Reading. Complainant was then notified by the agent for the Norfolk & Western of the steps taken to effect diversion. The records of the Philadelphia & Reading show that four of the cars were received from the Baltimore & Ohio at 10 a. m. of November 15, the time of receipt on that day of the other two cars not being shown. When the agent for the Norfolk & Western at Roanoke wired the agent at Petersburg and the agents for its first two connections, a similar notification was sent by mail to the Philadelphia & Reading at Philadelphia. Complainant maintains that if this notification had been by telegraph it would have been received in time to have effected the diversion. This is conjectural.

Wet nitrocellulose is moved quickly because highly inflammable and used in the manufacture of explosives. These shipments moved under special orders of the War Department. For these reasons the Norfolk & Western did all that its tariff required it to do, and also took the precaution, because of the short hauls of its connections to Potomac Yard and the known dangerous character of the commodity, to wire each of those connections in an effort to comply with complainant's request. The failure to divert was due solely to the rapid movement of the shipments.

It is contended by defendants that, considering the hundreds of messages which must be sent over railroad wires and the need for preferred handling of train messages and dispatchers' messages, the diversion request was handled with due diligence and reasonable promptness; that it would have been impracticable for the Norfolk & Western at the time it telegraphed the Atlantic Coast Line and the Richmond, Fredericksburg & Potomac to have telegraphed the other participating carriers, because the diversion clerk was not informed as to how far the routes to the original destination and to the re-consigned destination are common, and to require him to investigate each case to develop that fact would seriously interfere with his work.

In explaining the necessary delay in handling diversions, defendants' witness testified that a railroad tracing clerk frequently has no record of a car mentioned in a telegram and must send for the information, and that the car-record office is necessarily 10 or 12 hours behind the movement of the cars owing to the multitude of car movements.

Complainant's principal contention is that up to Park Junction, Philadelphia, the movements under the original routing and under the changed routing would be identical, and as the carriers to that point were being operated by the Director General, the agent for the Norfolk & Western was the agent of the Director General, and as such it was his duty to telegraph the request for diversion to the last gateway through which he knew the traffic would pass.

While it is true that these roads were being operated under governmental control, it was not the purpose of the federal control act or of the orders of the Director General in operating under that act to alter or nullify the rates and other provisions of the lawful tariffs. On the contrary, except for the naming of certain regional and district officials with a view to effecting economies in the supervision and operation of the various activities of the carriers, the traffic and operating entities of the individual lines were maintained during federal control distinct from those of other lines and their tariff provisions were observed. The fact that the tariff provision under consideration was not eliminated when the tariff was reissued under federal control, but was continued with some amplification, is convincing that the purpose and intention of the Director General was to operate the Norfolk & Western in accordance with the provisions of the tariff rule as revised. It is clear from the record that defendants exercised due diligence in performing what they undertook to perform under the published tariff rule. No attack is made upon the reasonableness of the tariff rule.

We find that the charges complained of were not unreasonable or otherwise unlawful.

The complaint will be dismissed.

No. 12114.
CHARLESTON MILLING COMPANY
v.
MISSOURI PACIFIC RAILROAD COMPANY.

PORTIONS OF FOURTH SECTION APPLICATIONS
NOS. 4218, 4219, AND 4220.

Submitted May 26, 1921. Decided November 25, 1921.

1. Rate charged on a carload of corn meal from Memphis, Tenn., to Charleston, Mo., found unreasonable. Reparation awarded.
2. Fourth section relief denied.

H. L. Harp for complainant.

James M. Chaney for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation manufacturing flour, feeds, and meal, at Charleston, Mo., alleges that the rate charged by defendant on a carload of corn meal, shipped March 8, 1920, from Memphis, Tenn., to Charleston, was unjust and unreasonable to the extent that it exceeded the aggregate of intermediate rates, in violation of sections 1 and 4 of the interstate commerce act. Reparation only is sought. Rates will be stated in cents per 100 pounds.

Charleston is a local point on the Missouri Pacific approximately 15 miles southwest of Cairo, Ill., and 207 miles from Memphis. The shipment weighed 52,588 pounds and freight charges of \$249.79, based on the applicable fifth-class rate of 47.5 cents, were collected at destination.

There was in effect over the route of movement a combination rate of 26.5 cents, minimum 60,000 pounds, composed of commodity rates of 10 cents from Memphis to Gavin, Ark., and 16.5 cents thence to destination. This departure from the aggregate-of-intermediate-rates provision of the fourth section was protected by applications filed with us by defendant.

Complainant shows that a commodity rate on corn meal of 12.5 cents was applicable over defendant's line from Charleston to Memphis, and that the St. Louis-San Francisco maintained a rate of 12.5 cents from Memphis to Sikeston and Cape Girardeau, Mo., and other points on its line in the vicinity of Charleston. The rate charged yielded ton-mile revenue of 45.9 mills, and the 26.5-cent rate would have yielded 25.6 mills.

Defendant states that the assailed rate was based on the maximum distance scale of class rates prescribed in *Memphis-Southwestern Investigation*, 55 I. C. C., 515, as applied to the distance over the shortest reasonable two-line route between Memphis and Charleston, and was lower than would have been produced by the use of the actual distance over the route of movement; that both of the factors composing the lower combination were group rates, the factor from Gavin to Charleston applying to all points in the so-called Cairo blanket territory extending from the Arkansas-Missouri line to Bismarck, Mo., 107 miles, and from the Mississippi River on the east to Poplar Bluff, Mo., on the west, approximately 100 miles; that this factor was made applicable northbound through error, there being practically no movement of meal in that direction; and that the bulk of the movement under this rate is southbound from mills located in the blanket territory described. It cites, among other cases, *White Brothers v. A., T. & S. F. Ry. Co.*, 17 I. C. C., 288, and *Humphreys-Godwin Co. v. Y. & M. V. R. R. Co.*, 31 I. C. C., 25.

Following *Hudson Mule Co. v. L. & N. R. R. Co.*, 63 I. C. C., 6, we find that the fourth section departure has not been justified; that the rate assailed was, is, and for the future will be unreasonable to the extent that it exceeded or may exceed the aggregate of the contemporaneous intermediate rates; that complainant made the shipment as described and paid and bore the charges thereon; that it has been damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rate herein found reasonable, minimum weight 60,000 pounds; and that complainant is entitled to reparation in the sum of \$90.79, with interest.

Orders denying those portions of fourth section applications involved herein, and awarding reparation, will be entered. No order for the future is necessary.

HALL, *Commissioner*, concurring:

In joining in the finding of unreasonableness, as well as the other conclusions reached, I rest upon the record in this case and not at all upon the precedent cited, *Hudson Mule Co. v. L. & N. R. R. Co.*, 63 I. C. C., 6, which seems to me unsound. If I had participated in the disposition of that case I should have concurred in the dissenting expression of COMMISSIONER DANIELS.

No. 10149.

BOARD OF RAILROAD COMMISSIONERS OF THE STATE
OF IOWA ET AL.

v.

MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY,
DIRECTOR GENERAL, AS AGENT, ET AL.

Submitted August 20, 1921. Decided December 6, 1921.

Upon further hearing, combination through rates on walnut dimension lumber, not further finished than sawed to shape, in carloads, from Des Moines, Iowa, to points east of the Indiana-Illinois state line, or for export, found unreasonable and unduly prejudicial to the extent that the proportional commodity rates from Des Moines to upper Mississippi River east-bank crossings exceed 57 per cent of the corresponding proportional commodity rates from the Missouri River cities to Mississippi River crossings. Original report in 53 I. C. C., 484.

J. H. Henderson and E. G. Wylie for complainants.

Frank H. Towner, Ralph M. Shaw, R. H. Widdicombe, K. F. Burgess, O. W. Dynes, A. B. Enoch, and N. S. Brown for defendants.

REPORT OF THE COMMISSION ON FURTHER HEARING.

EASTMAN, *Commissioner*:

Exceptions were filed by defendants to the report proposed by the examiner. We have reached conclusions differing somewhat from those which he recommended.

In *Warnock Co. v. C. & N. W. Ry. Co.*, 21 I. C. C., 546, we prescribed maximum proportional rates for the first five classes from Mississippi River crossings to the Missouri River cities and points taking the same rates, applicable on traffic originating at points east of the Indiana-Illinois state line. In *Interior Iowa Cases*, 28 I. C. C., 64; 29 I. C. C., 536; and 46 I. C. C., 39, we held that the proportional class scale prescribed in the *Warnock Case*, *supra*, should be prorated equitably between the Mississippi and Missouri rivers as a basis for fixing rates between the territory east of the Indiana-Illinois state line and the interior Iowa cities. In our report, 46 I. C. C., 39, we prescribed a specific proportional scale of reasonable maximum class rates between west-bank Mississippi River crossings and interior Iowa cities, and said that we would expect the carriers to adjust their commodity rates to conform to the class-rate basis therein prescribed. Thereafter the carriers established proportional commodity rates on 64 I. C. C.

certain articles which purported to be in harmony with the views so expressed. They did not, however, include proportional commodity rates on walnut lumber or walnut-lumber pieces.

Upon complaint that the combination through rates on walnut dimension lumber, pieces, in carloads, from Des Moines, Iowa, to points east of the Indiana-Illinois state line, and more particularly the components thereof applying from Des Moines to the Mississippi River, were unreasonable and unduly prejudicial, we found in our original report herein, 53 I. C. C., 484, following the principles announced in *Interior Iowa Cases, supra*, that defendants should establish commodity rates on walnut lumber or walnut-lumber pieces from Des Moines to points east of the Indiana-Illinois state line equitably related to the corresponding commodity rates contemporaneously maintained from the Missouri River cities, and gave them 90 days within which to establish such rates.

Within the 90-day period, defendants published proportional commodity rates on walnut dimension lumber, in carloads, not further finished than sawed to shape, from Des Moines to upper Mississippi River west-bank crossings, 9 cents on export and 13 cents on domestic shipments, when destined to points east of the Indiana-Illinois state line, which rates have since become 12 and 17.5 cents, respectively, under the general increases of 1920. Upon representations from complainants that these rates were not in accord with our findings, the case was reopened for further hearing. Rates herein are stated in cents per 100 pounds.

The facts of record and the contentions of the parties relate primarily to the question whether the rates assailed conform with the reasonable and nonprejudicial basis prescribed in *Interior Iowa Cases, supra*. In that proceeding we announced the principle which should govern the determination of proportional class and commodity rates between interior Iowa cities and Mississippi River crossings, irrespective of changes in the level of such rates. To the extent that the rates assailed are higher than would result from the correct application of this principle they must, in the absence of convincing evidence to the contrary, be deemed unreasonable and unduly prejudicial.

There are no specific through rates on this traffic. Under general order No. 28 of the Director General of Railroads the combination through rates were increased 25 per cent but not to exceed an increase of 5 cents. This resulted in some, if not all, of the through rates being less than the full combination. The record does not disclose the basis upon which rates affected by the 5-cent maximum increase were divided east and west of the river. However, the purposes of this report will be served by considering only the separately established factors to the river now in effect.

The rate on common lumber from the Missouri River cities to Mississippi River crossings, when destined east of the Indiana-Illinois state line, and on walnut lumber for export, is 21 cents, and the proportional rate on domestic shipments of walnut lumber, including dimension lumber, pieces, is 26.5 cents, a differential of 5.5 cents over the rate on common lumber. These rates apply both to east-bank and to west-bank crossings. The proportional rates from Des Moines to the Mississippi River, 12 cents on common lumber and on walnut dimension lumber for export, and 17.5 cents on domestic shipments of walnut dimension lumber, apply only to west-bank crossings, except that the 17.5-cent rate also applies to East Hannibal, Ill., on the east bank. With this exception the proportional rate on walnut lumber from Des Moines to east-bank crossings is 19.5 cents. The percentage relationships of these rates from Des Moines to the corresponding rates from the Missouri River cities are 57, 66, and 73.5 per cent, respectively.

Complainants contend that the percentage relationship of the rates from Des Moines on walnut lumber should not exceed 55 per cent. They point out that in the *Warnock Case*, *supra*, we prescribed a proportional fifth-class rate of 20 cents between the rivers, and that following *Interior Iowa Cases*, 46 I. C. C., 39, a proportional fifth-class rate of 11 cents was established from Des Moines to the Mississippi River. The latter rate is 55 per cent of the former. They assert that over 50 per cent of the commodities given car-lot classification throughout the country are rated fifth class, and that therefore the percentage relationship of the fifth-class rates from the Missouri River cities and Des Moines to the Mississippi River upon traffic destined east of the Indiana-Illinois state line should be used as a basis for computing the percentage relationship of the rates on walnut dimension lumber. Applying this percentage to the present proportional rate of 21 cents on common lumber from the Missouri River cities, they arrive at a rate of 11.5 cents from Des Moines, which they regard as reasonable. Complainants cite commodity rates maintained by defendants on numerous other articles from Des Moines to the Mississippi River which are 55 per cent of the corresponding rates from the Missouri River cities, and assert that the Railroad Administration approved this basis during federal control.

Defendants call attention to the fact that the relationship between the respective fifth-class rates has been widened to 55.9 per cent by application of the rules for the disposition of fractions promulgated in connection with the general increases referred to. They contend that a more reasonable basis would result from using the relationship between the average of all the 10 classes in the class-rate scales, that relation being 57.8 per cent; or by using the relationship between the

average distances from the Missouri River cities and from Des Moines to the Mississippi River crossings.

In computing the distance relationship defendants used the average distance via all routes, or 337 miles from the Missouri River cities and 196 miles from Des Moines, making the relationship 58.2 per cent. The average short-line distance by groups from all of the Missouri River cities to both upper and lower Mississippi River crossings is shown by defendants as 322 miles. We have frequently used 325 miles as a basis for determining just and reasonable rates between the rivers. The short line between Des Moines and the Mississippi River is approximately 160 miles over the Minneapolis & St. Louis, and this distance was used by the carriers as a basis for establishing proportional class rates from Des Moines in connection with the scale prescribed in *Interior Iowa Cases*. The average short-line distance between Des Moines and all upper Mississippi River crossings is shown in defendants' exhibit as being 186 miles. Using the average distances of 186 miles from Des Moines and 325 miles from the Missouri River cities, the relationship based on relative distances would be about 57 per cent instead of 55 per cent as stated in our original report.

At the previous hearing defendants offered exhibits of comparative rates on walnut lumber from points in Wisconsin, Missouri, and Arkansas to show that the through rates attacked are not unreasonable or otherwise unlawful. At the further hearing an exhibit was presented comparing the ton-mile earnings under the through rates from Des Moines with those from Missouri River cities to selected eastern destinations to which there is a substantial movement of walnut dimension lumber. At the time that exhibit was prepared the rate from the Missouri River cities on walnut lumber, including dimension pieces, was based upon value, and a rate of 21 cents, then applicable on walnut, invoice value not exceeding \$50 per 1,000 feet, as well as on common lumber, is shown in the comparisons. Since then the basis of value has been eliminated and a rate of 26.5 cents established on domestic shipments of walnut dimension lumber. The earnings under the present through rates on walnut dimension lumber, pieces, from Des Moines compare favorably with those under through rates on the same commodity from the Missouri River cities and between other points shown in the exhibits.

Much of the additional evidence offered by complainants on further hearing relates to the differentials in the rates on walnut over common lumber from Des Moines to the Mississippi River. Defendants objected to this evidence on the ground that it was irrelevant. The original report plainly states that the differentials were not then in issue, but directed defendants to "give consideration to the

matter of the proper relation of rates on walnut to the rates on other kinds of lumber." Since our order reopening the proceeding did not alter the issues, consideration of such evidence in this report is restricted to its bearing upon the issue of unreasonableness of the rates assailed.

The rates eastward from the Mississippi River on walnut and common lumber are the same. In support of its contention that the rates from Des Moines should be the same on walnut as on common lumber, complainants submitted several exhibits showing that walnut lumber sells for approximately the same prices as other lumber, such as first and second quartered white and red oak, birdseye maple, and cherry, although the latter all move under a lower rate. They also refer to *Honaker Lumber Co. v. N. & W. Ry. Co.*, 48 I. C. C., 715, wherein rates on oak, spruce, and hemlock lower than on other lumber from points on the Norfolk & Western and its connections in Virginia and West Virginia to certain portions of the middle Atlantic and New England states were found to be unjustly discriminatory. The consolidated classification provides the same ratings on walnut and common lumber in official and southern territories and prescribes "lumber rates" in western territory. For defendants it was testified that a differential of 5.5 cents in the rates on walnut over common lumber is maintained generally throughout western trunk line territory.

The rates from Mississippi River crossings to central territory are generally lower from the east bank than from the west bank, and to trunk line territory are the same from either bank. The applicable combination through rates from Des Moines are based on the east-bank crossings to points in central territory and on the west-bank crossings to points in trunk line territory. Complainants assert that the vast majority of the commodity rates to Mississippi River crossings have been for many years and are now published to the east bank, and that the proportional commodity rates on walnut lumber from Des Moines should be published to both banks. As stated, the rates from the Missouri River cities apply both to east-bank and west-bank crossings. Defendants explain that the present rates from Des Moines, with the exception of the rate to East Hannibal, are applied only to the west bank, in compliance with the decision in *Interior Iowa Cases*, 46 I. C. C., 39, in which the proportional scale previously referred to herein was prescribed between the west bank of the Mississippi River and interior Iowa cities on traffic to and from points east of the Indiana-Illinois state line. They express willingness, however, to apply the present rates to both banks of the river.

Following the principle announced in *Interior Iowa Cases, supra*, and upon the record herein, we find that the through rates assailed applicable on export and domestic shipments of walnut dimension lumber not further finished than sawed to shape, in carloads, when destined to points east of the Indiana-Illinois state line, or for export, are, and for the future will be, unreasonable and unduly prejudicial to the extent that the proportional commodity rates from Des Moines to upper Mississippi River east-bank crossings, East Dubuque to East Keokuk, Ill., inclusive, exceed or may exceed 57 per cent of the corresponding proportional commodity rates from the Missouri River cities to Mississippi River crossings, East Dubuque to East St. Louis, Ill., inclusive.

An appropriate order will be entered.

COMMISSIONER HALL dissents.

64 I. C. C.

No. 11916.

KANSAS RATES, FARES, AND CHARGES.

IN THE MATTER OF INTRASTATE RATES, FARES, AND
CHARGES IN THE STATE OF KANSAS.

Submitted October 28, 1921. Decided December 13, 1921.

Previous findings and order herein applied to certain situations disclosed upon further hearing. Former report, 62 I. C. C., 440.

Clyde M. Reed, A. E. Helm, and P. A. Conway for Public Utilities Commission of Kansas.

James L. Coleman and J. M. Souby for respondent steam carriers.
B. L. Glover for Iola Cement Mills Traffic Association; *W. P. Huston* for Wichita Board of Commerce; *Charles W. Mittendorf* for Chamber of Commerce, Hutchinson, Kans.; and *E. H. Hogueland and Raymond W. Moore* for Dewey Portland Cement Company.

REPORT OF THE COMMISSION ON FURTHER HEARING.

McCHORD, *Chairman*:

In our previous report in this case, 62 I. C. C., 440, we found, subject to a few exceptions stated in the report, that the failure of respondents to increase their intrastate rates, fares, and charges within the state of Kansas correspondingly with their interstate increases, resulted in the past and would result in the future in undue prejudice to persons and localities outside the state and in unreasonable preference to persons and localities within the state, and in unjust discrimination against interstate commerce. To correct the situation we entered our order requiring the respondents to increase their intrastate rates and charges in effect on July 29, 1920, and their passenger fares, excess-baggage charges and milk and cream rates in effect July 6, 1921, the date of our order, by amounts corresponding to the increases theretofore made under *Increased Rates, 1920*, 58 I. C. C., 220, and *Authority to Increase Rates*, id., 302, hereinafter referred to as Ex Parte 74, and in effect on the date of that order. The following provision was included in our order:

It is further ordered, That nothing in this order shall be construed as requiring or authorizing any common carrier to establish, put in force, or maintain any rate, fare, or charge for the transportation of passengers or property in intrastate commerce which is greater than its corresponding rate, fare, or charge applicable to the transportation of passengers or property in interstate commerce from, to, or at the same points in effect on the date hereof, or greater than its corresponding rate, fare, or charge contemporaneously in effect and applicable to the transportation of passengers or property in interstate commerce.

The words "or authorizing" were included in this provision through error and our supplementary order herein will provide for their elimination.

The meaning of this provision was the subject of considerable controversy, and upon application of the Public Utilities Commission of Kansas, successor to the Court of Industrial Relations, alleging that respondents had in many instances violated our order in publishing the increased rates, the district court of the United States for the district of Kansas, first division, on August 3, 1921, issued a temporary restraining order restraining Kansas carriers—

from collecting, charging, or putting into effect rates and charges for application upon intrastate traffic in the State of Kansas on classes and commodities which are greater than the rates and charges in effect and applicable upon similar classes and commodities for equal or greater distances in interstate commerce from, to, or at points in Kansas, on the one hand, and points in other states, on the other hand, at the date of making of said order in said docket No. 11916.

This restraining order was dissolved on August 10, after hearing on an application for an interlocutory injunction, the court denying the injunction and referring the Kansas commission to us to exhaust its remedy here, but retaining jurisdiction of the case pending resort to us.

Thereupon an informal petition was filed with us by the Kansas commission asking us to make an amendatory order herein defining and construing the provision of our order quoted above. The real dispute between the Kansas commission and the respondents is as to the proper interpretation of "corresponding rate * * * or charge"; or, rather, they can not agree as to what is the corresponding rate or charge applicable to the transportation of property in interstate commerce, which, of course, in each instance is a question of fact. We thereupon reopened the proceeding for further hearing with reference to specific intrastate rates, fares, or charges applicable within the state of Kansas that may be higher than interstate rates, fares, or charges to or from Kansas points.

Interstate rates higher or lower than other interstate rates on one same commodity for hauls of equal length exist everywhere in the country, and there is nothing unusual about finding some intrastate rates higher or lower than interstate rates for like distances in and about Kansas or any other state. It is sufficient to say, without going into details or citing examples, that such situations could be avoided only by ignoring transportation, commercial, competitive, and economic conditions, making all rates on a strictly distance basis, with no grouping, and confining practically all traffic between given points to one route. Whether the increases be in interstate or in intrastate rates, instances will occur in which a group rate

will apply for a longer or shorter haul than a distance rate, or in other ways any one of the various discrepancies here stressed may occur. When these are brought to our attention it becomes our duty to ascertain whether they result in undue prejudice, undue preference, or unjust discrimination which lies within the scope of our power and duty to remove.

Upon the further hearing the chairman of the Kansas commission at the outset made the following proposal:

The Public Utilities Commission is willing to stipulate with respondent carriers that the measure of the maximum intrastate rates between points in Kansas shall be the lowest interstate rate on which traffic moved for similar distances from or to Kansas points, class rates to be compared with class rates, and commodity rates to be compared with commodity rates. The question as to whether certain rates should be established in accordance with the foregoing to be agreed to in conference between representatives of the Public Utilities Commission and the carriers respondents in I. C. C. Docket 11916, disputed questions to be referred informally to the Interstate Commerce Commission.

This proposal was distinctly at variance with respondents' position, and was rejected by them. It is quoted here mainly because it indicates the position taken by the Kansas commission, which, stated in simple terms, is to select the lowest interstate rate that can be readily found and which may move some traffic and measure it with the entire body of intrastate rates. A carrier may publish an interstate rate between two points, say 100 miles apart. The short-line distance between the same points over the route of another carrier may be 75 miles. The first carrier may desire to meet the rate of the short line, but if it does so it does it at the peril of having its intrastate rates measured by that yardstick.

This policy or contention of the Kansas commission, if carried to its logical conclusion, would be so destructive of existing rate structures and of sound and well-established principles and methods of rate making that to state it is to condemn it. Probably no interested party would support it except the few who might temporarily secure an advantage therefrom. If we were to start with a clean slate some so-called scientific basis of rate making, based on strict mileages, might be adopted, but, as it is, the process of rate making and dealing with rate situations must necessarily be one of evolution, not revolution.

It is upon this inadmissible basis that many of the exhibits submitted at the further hearing were prepared. This will more fully appear upon consideration of specific instances, developed upon further hearing. The evidence then presented was for the most part merely cumulative of that presented at the original hearing, which was given full consideration by us when we made our original findings and order herein.

CLASS RATES.

The Kansas commission's principal complaint is that there are no joint intrastate class rates in Kansas. This situation was quite fully dealt with in our former report. We there said that the situation was not substantially different from that which obtains interstate between Kansas and Nebraska and intrastate in Nebraska. The situation has been countenanced for many years by the Kansas state authorities. We also said that the establishment of joint rates was not in issue in this case. The order reopening it for further hearing did not inject that issue into the case.

The so-called standard distance scale is applicable on interstate as well as on intrastate traffic. Following Ex Parte 74 the carriers published for interstate application these distance rates increased by 35 per cent, and the Kansas commission authorized and the carriers published the same distance rates for intrastate application increased by 30 per cent. The Kansas commission did not deny the full increase on the ground it now advances, that they were on a higher plane than the interstate rates from St. Joseph and Kansas City. Neither did it require the establishment of joint rates. These standard distance-scale rates move very little traffic, either interstate or intrastate. We find that the rates for interstate application are the corresponding interstate rates covered by our order.

The class rates under the so-called jobbers scale were originally based on specific class rates from Kansas City, Mo., to points in Kansas over the Atchison, Topeka & Santa Fe. The rates from Missouri River crossings are not on a distance basis and are not even based on a distance scale. For the most part the class rates from Missouri River crossings to points in Kansas are single-line rates, but there are a few joint-line rates. The latter is the case where one line does not reach all of the crossings. For instance, the St. Louis-San Francisco joins with the Chicago, Burlington & Quincy and the Chicago Great Western in joint rates from Atchison, Leavenworth, and St. Joseph to points on its line in Kansas common to it and to the Missouri Pacific and Santa Fe in order to meet the single-line rates of the last-named lines from those crossings. Furthermore, the class and commodity rates between the crossings, on the one hand, and stations in Kansas approximately 75 miles or so west of such crossings, on the other hand, were and generally are the same, although one crossing might of course be considerably nearer a particular point of destination than another crossing. The rates are said to be controlled by the nearest crossing. In many exhibits submitted by the state commission or by shippers the rates within Kansas are compared with those from Kansas City, whereas the rates from

Kansas City are the same from the other Missouri River crossings which in most instances are nearer the points of destination. To many points in Kansas, Atchison is 43 miles nearer than Kansas City, and the opposite is of course also true. The Kansas commission does not advocate breaking up this long-standing adjustment, as it would tend to confine each Kansas point to one Missouri River jobbing point, but unless that were done the contention of the Kansas commission that rates within Kansas should be measured mile for mile with the lowest interstate rate would inevitably result in a lower level of rates within Kansas than from the Missouri River. This fundamental error permeates many of the exhibits and renders them of little probative value. The chairman of the Kansas commission conceded that where the rate is controlled by the nearest crossing the distance from that crossing should be used.

In support of its contentions the Kansas commission submitted voluminous exhibits which are very illustrative of the extent to which it would have us go. Specific interstate joint class rates from Atchison, Leavenworth, and St. Joseph to 14 stations in Kansas on the Missouri, Kansas & Texas are compared with combination class rates from Bangor, Kans., a point on the Missouri, Kansas & Texas, to points in Kansas on the Missouri Pacific for approximately equal distances. The distances to points on the Missouri, Kansas & Texas are based on the average distance from the three crossings named to Kansas City, Mo., and thence via that line to destinations. The combination rates shown are made up of standard distance rates to Moran, Kans., and jobbing rates from Moran. Similar comparison is made of joint class rates to points on the St. Louis-San Francisco with combination rates from Fontana, Kans., a station on that line, to stations on the Missouri Pacific. Both Bangor and Fontana are very small towns and are not recognized jobbing centers. Obviously, the rates from Missouri River crossings to points in Kansas are not interstate rates corresponding to those in effect from such small stations to other points in Kansas. Throughout most of the exhibits there is a marked absence of comparisons of rates to a common territory approximately equidistant from the Missouri River and from jobbing points in Kansas.

Another exhibit of the Kansas commission compares specific class rates from Kansas City, Mo., to points on the central branch of the Missouri Pacific running from that city through Leavenworth and Atchison to Stockton, Kans., with jobbers distance-scale rates for approximately the same distances from Kansas points to points on other branches of the Missouri Pacific. In its brief the Kansas commission calls attention to the first-class rate from Kansas City to Parnell, 54 miles, of 37 cents as compared with a rate of 49.5

cents for an equal haul from Hutchinson, Kans., to Kanopolis, Kans. Parnell is 7 miles west of Atchison and the rates from all points west thereof are of course influenced by the rates from Atchison. From Goffs, Kans., west the rates are the same from all four crossings. Goffs is 47 miles west of Atchison, the nearest crossing to those points of destination. Thus, the first-class rate from Kansas City, Mo., to Goffs for 96 miles is 50.5 cents. This is compared with a rate of 67.5 cents for 96 miles between various Kansas points. But, as we have seen, the rate to Goffs is the same from Atchison and Kansas City. The rate under the jobbers' scale for 47 miles, the distance from Atchison to Goffs, is 49.5 cents. This situation has existed for many years, and as in the case of the standard distance rates the Kansas commission authorized an increase of 30 per cent in the intrastate rates.

The real complaint of the Kansas commission as to class rates is the lack of joint rates, but we have previously stated that the establishment of joint rates is not in issue, and even if it were the record does not furnish a sufficient basis for the establishment of such rates, nor in fact does it disclose the necessity therefor. When all the various factors disclosed of record and instanced above are taken into consideration, it has not been shown that the intrastate rates are on a higher level than the corresponding interstate rates. A joint interstate rate established on account of carrier or other competition can not be found, we think, to correspond with an intrastate combination rate made up of factors based on a standard distance scale and the jobbers scale applying between different points. Some joint rates from Kansas City, Mo., into Kansas are the same as those that apply for single-line hauls, but they are made to meet the competition of the one-line routes, and if differentials were added thereto the joint-line routes would be practically closed to the traffic. As we understand it, respondents are willing as a matter of business policy to establish joint rates on the same basis as for single-line hauls on intrastate traffic also wherever there is substantial competition with a single-line route.

COMMODITIES.

Cement: The Kansas cement interests renew their demand for the application intrastate in Kansas of the scale-II rates prescribed in *Western Cement Rates*, 48 I. C. C., 201, for territory east of the Missouri River. As stated in the previous report, the intrastate rates are higher in many, if not most, instances than the rates applying for equal distances between Kansas points and points east of the Missouri River in scale-II territory. It also appears that many

intrastate rates in Kansas are higher than interstate rates in scale-III territory, particularly between Kansas and Nebraska points and between Kansas and Oklahoma points, and also that many intrastate rates in Kansas are lower than the interstate rates in scale-III territory; but, taking the situation as a whole, it seems clear that intrastate rates in Kansas are not higher than apply interstate in scale-III territory. Obviously, since Kansas is in scale-III territory the intrastate rates in Kansas should harmonize with the rates in that territory, rather than with the rates in scale-II territory or between scale-II territory and scale-III territory. Whether or not there should be any change in the Kansas intrastate rates is a matter which we think should await our forthcoming supplemental decision in the above case. The question whether scale-II rates should be extended into part of scale-III territory is there presented upon a much broader record. Whatever scale is found proper for scale-III territory in that case should be made the basis for intrastate rates in that part of Kansas embraced in the scale-III territory.

Gypsum Rock: From Ideal, Cement, Southard, and Gladys, Okla., all served by the St. Louis-San Francisco, to Kansas cement-manufacturing points the rate on gypsum rock, in carloads, for hauls ranging from 212 to 325 miles, is 9.5 cents. From the Kansas producing points, Medicine Lodge, Sun City, and Blue Rapids, to the same destinations the intrastate rates for generally shorter hauls are 10 cents or higher. Respondents practically concede that there is no reason for most of these differences. The same carriers that in many instances participate in the rates from Kansas points also participate in the rates from Oklahoma. We find that the rates from the Oklahoma points named are the corresponding interstate rates, and as such the intrastate rates from the Kansas points of origin should not exceed them, distance for distance.

Coal: The published rates¹ on slack coal, in carloads, from Kansas mines to points within the switching limits of Kansas City, Mo., are \$1.065 per ton. From the same mines to Kansas cement-manufacturing points the rates range from \$1.08 to \$1.89 per ton for comparable distances. The interstate rates are said to represent reductions from \$1.35 per ton made necessary by competition of Kansas coal with coal from Illinois mines brought to Kansas City on relatively low rates established by the Chicago & Alton. This same competition does not affect the rates from and to Kansas points. The Kansas commission contends that these rates are not depressed below a reasonable level, but certainly they are not high for short-haul traffic in that part of the country. They are clearly below the usual basis and are not the interstate rates corresponding to these intrastate

¹ Now under suspension in Investigation and Suspension Docket No. 1425.

rates. Obviously, and we so find, the corresponding interstate rates in this instance are those applying from the mines in Missouri embraced in the same producing region. As set forth in our previous report, since June 25, 1918, the mines on both sides of the state line have been treated as a unit from a rate standpoint; that is, to a given point in Kansas the same rate applies from Kansas mines as from Missouri mines. The same is true as to interstate destinations such as Kansas City, Mo. Following the contention of the Kansas commission to its logical conclusion would mean that as a result of reducing their rates to Kansas City to meet competition there and thereby affording an additional outlet for the Kansas product the carriers would be forced to reduce their rates throughout the state.

Broom corn, horses and mules, and vinegar: At the hearing the carriers agreed that the rates from points in Kansas to Wichita on broom corn and horses and mules should be revised to correspond with the rates for like distances from points in Kansas to Kansas City, Mo. The situation was explained to some extent in our previous report. The carriers, together with the Kansas commission and the Wichita Board of Commerce, have agreed upon a basis of rates which will afford Wichita the desired relief. The rates agreed upon were compiled from the rates now in effect from points in Kansas on the main line of the Santa Fe to Kansas City. They have also agreed upon rates on vinegar, in carloads, from Wichita to jobbing points in southeastern Kansas in harmony with the interstate rates from Kansas City and southwestern Missouri and Arkansas producing points.

Linseed-oil meal: Intrastate commodity rates on linseed-oil meal, in carloads, from Fredonia, Kans., are the same as on grain, but the interstate rates from Kansas City and St. Joseph, Mo., to points in Kansas are less than on grain and less than those applying from Fredonia. Fredonia competes with the Missouri River cities in distributing this commodity to points in Kansas. The rates from Fredonia were formerly less than on grain, but were increased to the grain basis following general order No. 28 of the Director General of Railroads. For some reason the rates from the Missouri River cities were not so increased. Respondents are willing to correct this situation by increasing the rates from the Missouri River cities to the grain basis. We are of opinion that the rates from the Missouri River cities are the corresponding interstate rates, and the Kansas rates should be on the same basis.

There is a limited amount of evidence as to rates on several other commodities, but it is not such as would warrant a determination of what were the corresponding interstate rates. In some instances interstate rates over one branch of a carrier are compared with intra-

state rates over another branch of the same carrier. Many instances can be found where the interstate rates are higher than the intrastate rates for approximately the same distances. In other instances intrastate rates to points in Kansas are compared with rates from the same points to points outside the state which were established to allow the Kansas points to compete with producers in other states. The chairman of the Kansas commission stated that he was not inclined to press the complaint in this proceeding as to rates on several commodities, including lumber and certain lumber products, grain, hay, and furniture.

The desirability of eliminating less-than-carload commodity rates on beans, sugar, coffee, canned goods, cotton piece goods, etc., which are a source of irritation, is also referred to. The carriers have eliminated many such rates elsewhere in the west and southwest with our sanction. There are commodity rates on furniture, in carloads, with a minimum of 20,000 pounds regardless of the size of the car. In the *Consolidated Classification Case*, 54 I. C. C., 1, we recommended the adoption of a graded scale of minimum weights for furniture, and it was our understanding that the minimum weight applying in connection with commodity rates would be amended to conform to the classification basis. This, of course, might necessitate some change in the rates themselves. We recommend these matters to the carriers for their consideration.

No further order is necessary to carry out the findings and conclusions herein made, but an order will be entered amending our previous order by striking out the words "or authorizing" from the eighth paragraph thereof.

COMMISSIONERS EASTMAN, CAMPBELL, and LEWIS dissent.

No. 12053.

PURE OIL COMPANY

v.

DIRECTOR GENERAL, AS AGENT, CHESAPEAKE & OHIO
RAILWAY COMPANY, ET AL.

Submitted July 19, 1921. Decided December 8, 1921.

Rate on petroleum refined oil, in tank-car loads from Cabin Creek Junction, W. Va., to Bowling Green, Ky., found unreasonable and unduly prejudicial. Reparation awarded.

H. M. Myers for complainant.

John F. Finerty, Alex. M. Bull, E. C. Blanchard, and J. S. Patterson for defendants.

REPORT OF THE COMMISSION.

DIVISION 4, COMMISSIONERS MEYER, DANIELS, AND POTTER.

BY DIVISION 4:

Exceptions were filed by the Director General of Railroads, as Agent, to the report proposed by the examiner, and the case was orally argued before us.

Complainant, a corporation operating a refinery at Cabin Creek Junction, W. Va., alleges that the rate on a tank-car load of petroleum refined oil, shipped December 20, 1918, from Cabin Creek Junction to Bowling Green, Ky., to the extent that it exceeded 36.5 cents was unreasonable, unjustly discriminatory, and unduly prejudicial. The prayer is for reparation. Rates are stated in cents per 100 pounds.

The shipment weighed 53,216 pounds and moved as routed over the Chesapeake & Ohio to Newport, Ky., and the Louisville & Nashville thence to destination, about 448 miles. Freight charges were collected in the sum of \$218.19, at a combination through rate of 41 cents, composed of separately established rates of 18.5 cents from Cabin Creek Junction to Cincinnati, Ohio, and 22.5 cents beyond.

Prior to June 25, 1918, the rate from Cabin Creek Junction to Cincinnati was 14 cents and that from Cincinnati to Bowling Green 18 cents, the sum of these rates being 9 cents lower than the rate applied to this shipment. On March 10, 1919, the rate from Cabin Creek Junction to Bowling Green became 36.5 cents, being made up of pro-

portional rates of 16 cents from Cabin Creek Junction to Cincinnati and 20.5 cents from Cincinnati to Bowling Green. This readjustment was made in accordance with freight rate authority No. 96, issued by the United States Railroad Administration in July, 1918, substituting a flat increase of 4.5 cents in petroleum rates for the increases originally made under general order No. 28, and directing that this increase be applied but once to rates for continuous through hauls.

Complainant shows that when the shipment moved the rates from Falling Rock, W. Va., Louisville, Ky., Wood River, Ill., Whiting, Ind., Baton Rouge, La., and Oil City, Pa., all of which are refining points, to Bowling Green were but 4.5 cents higher than those in force June 24, 1918, while the rate from Cabin Creek Junction had been increased 9 cents in the same period. The defendants' evidence relates to the history of the separately established rates applied and the considerations prompting the Railroad Administration to issue various freight rate authorities dealing with so-called double advances under general order No. 28. The essential question to be determined is whether the rate assailed was unreasonable or unduly prejudicial, and not whether it was contrary to the intent of the Director General in applying the increases ordered in general order No. 28.

The rate from Falling Rock to Bowling Green, referred to in the foregoing paragraph, on June 24, 1918, was 32.5 cents or 0.5 cent higher than the contemporaneous rate to the same destination from Cabin Creek Junction. In December, 1918, the rate from Falling Rock was 37 cents, or 4 cents lower than that from Cabin Creek Junction. Falling Rock is situated on the old Coal & Coke Railroad, now a part of the Baltimore & Ohio, 17 miles northeast of Charleston, W. Va. Cabin Creek Junction is on the Chesapeake & Ohio, 15.5 miles southeast of Charleston. Beyond Charleston the most expeditious route to Bowling Green from both Cabin Creek Junction and Falling Rock would be that over which this shipment moved. The record indicates that complainant's refinery at Cabin Creek Junction was in competition with the one at Falling Rock. In view of the fact that Cabin Creek Junction was 1.5 miles nearer Bowling Green than Falling Rock and prior to June 25, 1918, had taken a rate 0.5 cent lower, it seems clear that the rate of 41 cents in effect December 20, 1918, from Cabin Creek Junction, being 4 cents higher than the contemporaneous rate from Falling Rock, was unreasonable and unduly prejudicial.

The shipment upon which reparation is sought was sold f. o. b. Cabin Creek Junction, and freight charges were paid by the consignee and purchaser of the oil. Subsequently the consignee called complainant's attention to the disparity between the rate charged and the rate from Falling Rock and requested complainant to reim-

burse it for such portion of the freight charges as reflected this difference. Thereupon complainant paid the consignee \$24.67, being the sum of \$23.95 freight charges and 72 cents war tax, and states that it did so in order to hold its customer's business. On brief defendants contend that because "complainant was not required to pay this amount nor was it paid as freight charges * * * any loss which complainant may have suffered was not in consequence of any violation of the provisions of the interstate commerce act, but was willful on the part of the complainant." This contention is not sound. Complainant was a party to the transportation record and it is not disputed that it actually bore the burden of the freight charges over and above what would have been charged had the rate been 36.5 cents. Whether it was legally obliged to do so or was actuated solely by considerations of commercial policy is immaterial. On the facts shown complainant is the only person to whom reparation could legally be awarded.

We find that the rate assailed was unreasonable and unduly prejudicial to the extent that it exceeded 36.5 cents per 100 pounds; that the charges on the shipment described at the applicable rate were paid to defendants; that complainant bore the difference between the amount paid and that which would have been paid under a rate of 36.5 cents; and that complainant has been damaged thereby and is entitled to reparation in the sum of \$23.95, with interest.

An appropriate order will be entered.

COMMISSIONER DANIELS dissents.

64 I. C. C.

No. 11755.

RARITAN COPPER WORKS

v.

DIRECTOR GENERAL, AS AGENT, NEW YORK, ONTARIO
& WESTERN RAILWAY COMPANY, ET AL.

Submitted June 6, 1921. Decided November 25, 1921.

Rate on copper bars, rough cast, in carloads, from Rome, N. Y., to Perth Amboy, N. J., found not unreasonable or otherwise unlawful. Complaint dismissed.

Warren Nichols for complainant.

John F. Finerty and *Thomas M. Woodward* for Director General.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner.

Complainant, a corporation refining metal at Perth Amboy, N. J., alleges that the rate of 22.5 cents charged on 25 carloads of copper bars, rough cast, shipped from Rome, N. Y., to Perth Amboy, between January 1 and January 12, 1920, was unreasonable, unjustly discriminatory, and unduly prejudicial to the extent that it exceeded 18 cents. Reparation only is asked. Rates are stated in cents per 100 pounds.

The shipments moved over the New York, Ontario & Western to Scranton, Pa., thence over the Central of New Jersey, 368 miles. Charges were collected at the applicable fifth-class rate of 22.5 cents. Upon request of complainant made prior to the movement, there was established on February 11, 1920, a commodity rate of 18 cents, which is the same as the rate in effect in the opposite direction at the time of shipment.

The loading of the cars varied from 43,280 to 103,954 pounds. Based upon an average loading of 70,000 pounds, the rate charged yielded \$157.50 per car. The ton-mile revenue was 12.2 mills. At the 18-cent rate the revenues would have been \$126 per car and 9.78 mills per ton-mile.

The copper bars were originally shipped by complainant from Perth Amboy to a purchaser in Rome, who rejected them and shipped

them back. Complainant contends that it was unreasonable to charge a greater amount for the return movement than for the original movement. Such excess does not demonstrate the unreasonableness of the higher rate. *Parlin & Orendorff Co. v. S. P. Co.*, 42 I. C. C., 29.

There was contemporaneously in effect over the route of movement a commodity rate of 18 cents on copper wire. Complainant contends that this is unjustly discriminatory and unduly prejudicial to copper bars, a raw material. The evidence does not warrant a finding that the difference in the rates on the bars and on the wire resulted in any disadvantage to this complainant. The volume of movement of copper bars from Rome to Perth Amboy is ordinarily light, the heavy movement being in the opposite direction.

Complainant compared the rate charged with rates of 19.5 cents on copper bars, in effect from Rome to Detroit, Mich., Pittsburgh, Pa., and Cincinnati, Ohio, for distances of from 439 to 632 miles. The ton-mile earnings under these rates were from 6.17 to 8.88 mills. The circumstances under which these rates were established were not disclosed.

Defendants submitted numerous comparisons of fifth-class rates in effect from and to various points in New York, New Jersey, Pennsylvania, and Delaware. The rates vary from 22.5 to 27 cents for hauls of from 317 to 370 miles. While it is not asserted that there is any considerable movement of copper bars from and to the points mentioned, the evidence is indicative of the general level of fifth-class rates in this territory. From Rome to Wilmington, Del., for example, the rate was 22.5 cents for a haul of 365 miles; from Rome to Shippenburg, Pa., 24.5 cents for a haul of 346 miles.

Defendants contend that the rate of 18 cents from Perth Amboy to Rome was unduly low. Exhibits were submitted showing contemporaneous commodity rates of 22.5 cents from Trenton and Kinkora, N. J., Philadelphia and Steelton, Pa., and Baltimore, Md., to Rome. The distances shown vary from 348 to 441 miles, and the revenues per ton-mile from 10.2 to 12.9 mills.

We find that the rates assailed were not unreasonable or otherwise unlawful. The complaint will be dismissed.

EASTMAN, *Commissioner*, dissenting:

In this case the rate charged was 22.5 cents, and complainant asks for reparation on the basis of 18 cents. At the time the shipments moved, a rate of 18 cents was applicable on copper bars over the route of movement in the opposite direction and was also applicable in the same direction on copper wire, a product manufactured from and more valuable than copper bars. Before the shipments moved, com-

plainant asked for a rate of 18 cents and this request was granted, but not until after the movement had taken place. Certainly these facts establish a presumption that a rate in excess of 18 cents was unreasonable, and I find no evidence to the contrary of sufficient weight to overcome this presumption. By awarding reparation, we should merely be giving effect to the intent of the Director General of Railroads which he was unable to carry out in time.

64 I. C. C.

No. 11003.

McGOWIN LUMBER & EXPORT COMPANY ET AL.

v.

DIRECTOR GENERAL, AS AGENT, GULF, FLORIDA &
ALABAMA RAILWAY COMPANY, ET AL.

Submitted July 6, 1921. Decided December 8, 1921.

Shipments of lumber from points in Alabama to destinations in New Jersey and other eastern states found to have been misrouted and others overcharged. Demurrage charges collected on certain shipments reconsigned in transit and held at Louisville, Ky., and Chattanooga, Tenn., found to have been illegal. Reparation awarded.

Brenton K. Fisk for complainants.

Claudian B. Northrop and *C. J. Rixey* for defendants.

REPORT OF THE COMMISSION.

DIVISION 4, COMMISSIONERS MEYER, DANIELS, EASTMAN, AND POTTER.
BY DIVISION 4:

Exceptions were filed by defendants to the report proposed by the examiner.

Complainants are corporations engaged in the lumber business at various points in Alabama and Georgia. By complaint filed October 30, 1919, as amended, they allege that the rates charged on numerous carloads of yellow-pine lumber shipped from points in Alabama to destinations in New Jersey and other eastern states between July 26, 1917, and April 2, 1918, were, in some instances, illegal and in others unjust and unreasonable by reason of misrouting. It is further alleged that demurrage charges collected on certain of the shipments were imposed without tariff authority. We are asked to award reparation. Rates will be stated in cents per 100 pounds.

The shipments, 62 in number, originated at Vredenburgh Junction, Demopolis, and other points in Alabama, located on the Southern; Alabama Great Southern; Alabama, Tennessee & Northern; Alabama & Northwestern; Gulf, Florida & Alabama; and Sumter & Choctaw railways and the Western Railway of Alabama. Four shipments were billed directly to points in New York and Pennsylvania. The majority of the remaining shipments were consigned to Louisville, Ky. A smaller number was consigned to Whitney

and Steele, Ala., Chattanooga, Tenn., and Effner, Ind. While en route or after arrival at first destination all but the four shipments above referred to were ordered reconsigned to destinations in the states of New York, New Jersey, Pennsylvania, Maryland, Connecticut, Rhode Island, Massachusetts, and Vermont. All of the shipments apparently moved via the lines of the Southern system through Danville, Ky., to Louisville, where they were delivered to its connections and moved to ultimate destinations via various routes. With the exception of certain undercharges and overcharges, the rates assessed were based on Louisville combinations.

Joint rates on lumber from points in Alabama and neighboring states to eastern destinations were applicable via the Virginia, West Virginia, and Maryland gateways. From a more limited territory, including the points of origin in issue, these rates also applied via Cincinnati, Ohio. The Baltimore & Ohio Southwestern, the Pittsburgh, Cincinnati, Chicago & St. Louis, hereinafter called the Pan Handle, and the Cleveland, Cincinnati, Chicago & St. Louis, hereinafter called the Big Four, extend from Louisville to Cincinnati and concurred in the joint rates. Complainants contend that defendants should have moved all of the shipments from Louisville by way of Cincinnati at the joint rates.

The Southern system had in effect during the greater part of the time covered by these shipments embargoes against the movement of lumber via Cincinnati. Ordinarily shipments to Louisville were permitted. Due to war conditions, embargoes were numerous via routes north of the Ohio River and at destinations in eastern territory. The tariffs of the Southern and the Alabama Great Southern permitted reconsignment at the through rate and prior to January 13, 1918, did not prohibit reconsignment to embargoed points. All but one of the shipments originated prior to that date. No embargo existed which would have prevented the movement of this shipment from York, Ala., April 2, 1918, through Cincinnati to its destination, Rochester, N. Y., via the Pennsylvania and its connections.

Three of the four shipments previously referred to, billed directly to eastern destinations, apparently moved via the Baltimore & Ohio Southwestern from Louisville to Cincinnati. The routing of the fourth shipment, from York, Ala., July 31, 1917, to Pottsville, Pa., for Philadelphia & Reading delivery, is not shown other than that it moved through Louisville. It does not appear that embargoes would have prevented movement of this car from Louisville via the Baltimore & Ohio Southwestern.

With respect to the balance of the shipments, two were ordered reconsigned without limitation upon routing, and moved from Louisville via the Baltimore & Ohio Southwestern. The reconsignment instructions covering the remaining cars may be roughly

divided into two classes—those in which the carriers were requested to protect the through rate and those in which it was specifically stated that movement from Louisville to Cincinnati was desired via the Baltimore & Ohio. These two kinds of instructions were often combined and in respect of both, in numerous instances, the carriers were directed to intercept the car and hold for further advice if for any reason they were unable to reconsign as requested.

Because of embargoes of its connections at Louisville or over routes beyond, as well as at points of destination, the Southern often encountered difficulty in disposing of the cars. In some instances complainants' traffic managers were advised that the desired routing could not be effected and further advice was sought. Instructions were given by complainants to reconsign two shipments from Louisville to Cincinnati via the Baltimore & Ohio Southwestern at the local rates, with the statement that the proper rate could be determined after final delivery. They moved as directed and demurrage charges were collected for detention at Louisville. Otherwise, except in the case of the four shipments originating on December 5 and 6, 1917, hereinafter referred to, complainants did not change the destinations specified in the original reconsigning instructions or deviate from their demands that the through rate be protected. The Southern delivered the shipments to one of its three connections, hereinbefore mentioned, at Louisville or, in numerous instances, to the Chicago, Indianapolis & Louisville, hereinafter called the Monon. Delivery to the Baltimore & Ohio Southwestern naturally resulted in movement via Cincinnati. The shipments delivered to the other carriers apparently did not move through Cincinnati, but in most cases the complete routing does not appear of record.

The four cars shipped December 5 and 6, 1917, from Vredenburg Junction to Louisville were ordered reconsigned to Summit, West Orange, and Bernardsville, N. J., and Brooklyn, N. Y., with directions to move via the Baltimore & Ohio Southwestern to Cincinnati, without specifying the routing beyond; or to intercept and hold the cars for further directions if reconsignment could not be accomplished. The embargo circular of the Southern then in effect prohibited routing via Louisville, and specifically stated that freight for points east of the Grand Rapids & Indiana Railroad must not be routed via Louisville to evade embargoes. The Southern advised complainant that it was unable to reconsign as the Baltimore & Ohio Southwestern or other connections would not accept. Two of the cars were held at Louisville and two at Chattanooga, and numerous communications were exchanged relative to their disposition. On January 24, 1918, three of the cars were ordered reconsigned to Elizabethport, N. J. The fourth car is also said to have been ordered reconsigned to Elizabethport on the same date, but the freight bill

in evidence shows that it was delivered at Bernardsville as originally directed. When these shipments originated the Baltimore & Ohio Southwestern was not embargoed between Louisville and Cincinnati, beyond which point the Pennsylvania and necessary connections for ultimate delivery were open. On January 24, 1918, all routes beyond Louisville were embargoed. Complainant in its supplemental instructions merely designated terminal delivery, but asked that reconsignment be immediately effected as there were no embargoes in effect when the shipments originated. These shipments were delivered to the Monon at Louisville, and were therefore misrouted.

Demurrage charges ranging from \$10 to \$115 per car were collected on eight shipments held at Louisville, by the Southern on the tracks of the Kentucky & Indiana Terminal Railroad, which is the joint terminal of the Southern, the Monon, and the Baltimore & Ohio Southwestern, and in the amount of \$140 on one of the cars detained by the Alabama Great Southern at Chattanooga. In each case the demurrage accrued primarily as the result of the failure of the carrier properly to interpret the provisions of the applicable tariff. The circumstances connected with some of the shipments have been described elsewhere herein.

Defendants contend that the joint rates did not apply over the route via the lines of the Southern to Louisville and thence to Cincinnati via the Baltimore & Ohio Southwestern, Big Four, or the Pan Handle. Their testimony in this respect is a reiteration of that adduced in *McGowin Lumber & Export Co. v. Director General*, 59 I. C. C., 238, wherein, in interpreting the same tariff here in controversy, we held that "nothing in the tariff would have precluded complainant from specifically routing the shipments through Louisville to Cincinnati by any of the three routes north of the Ohio River herein mentioned if it had billed the shipments to final destinations in the first instance." This statement also applies to the shipments herein.

As hereinbefore stated, there were no provisions in the tariffs of the Southern or Alabama Great Southern in effect prior to January 13, 1918, prohibiting reconsignment to an embargoed point. The embargoes were the disability of the defendants. This disability did not confer upon them the right of diverting the shipments to higher-rated routes contrary to the shippers' instructions, which did not contravene the tariff provisions.

The demurrage tariffs of the Southern, Alabama Great Southern, and Kentucky & Indiana Terminal did not specifically provide for the imposition of demurrage charges on shipments to embargoed points. Unless the tariffs prohibit reconsignment to embargoed points no demurrage charges accrue. *Wood v. N. Y., P. & N. R. R. Co.*, 53 I. C. C., 183. In the instances where additional reconsign-

ing instructions were given on shipments on which demurrage charges were assessed it appears that the original orders could have been complied with.

The shipment of August 23, 1917, from Hull, Ala., to Effner, Ind., had reached New Albany, Ind., when the Pan Handle was directed to return it to the Southern and the latter carrier was instructed to reconsign to Troy, N. Y., via the Baltimore & Ohio Southwestern, at the through rate. The car was returned to Louisville and moved from there over the Big Four. The tariff of the Southern permitted reconsignment of lumber at the through rate only while in transit or after arrival at destination on its line. Therefore, this shipment was not entitled to reconsignment at the joint rate. The rate applicable via the route designated was the aggregate of 17 cents to New Albany, 3.2 cents thence to Louisville, and 21.7 cents beyond. This combination rate, plus the switching charge of the Big Four, applied over the route of movement. Charges of \$163.47 were collected, but the basis therefor does not appear, and the shipment was undercharged.

As to the remaining shipments we find that the demurrage charges assessed were illegal; that the joint rates were applicable via Cincinnati, and therefore that the shipments moving from Louisville via Cincinnati were overcharged and the charges paid thereon were illegal; and that the shipments not transported from Louisville via Cincinnati were misrouted. We further find that complainants paid and bore the charges thereon, were damaged thereby and are entitled to reparation with interest; as to those shipments whereon charges were paid during the period of federal control, from the Director General of Railroads, as Agent; and as to the balance, from the Southern or the Alabama Great Southern, according as they were respectively responsible with regard to such shipments as accrued demurrage or were misrouted; and from the defendant carriers jointly, upon those shipments in connection with which overcharges have been found to exist. Complainants should comply with rule V of the Rules of Practice.

EASTMAN, *Commissioner*, dissenting:

I am unable to agree with the conclusion reached in this case for the reasons stated in my expression of dissent in *Meeds Lumber Co. v. Director General*, 59 I. C. C., 243.

No. 11665.

MADISON LUMBER & MILL COMPANY

v.

DIRECTOR GENERAL, AS AGENT, CAMAS PRAIRIE
RAILROAD COMPANY, ET AL.

Submitted May 28, 1921. Decided December 10, 1921.

Rates on brick and coal, in carloads, from points in Idaho, Utah, and Wyoming to Cottonwood and Nezperce, Idaho, found not unreasonable. One shipment of coal from Storrs, Utah, to Nezperce found overcharged. Reparation awarded.

R. S. Brown for complainant.

John F. Finerty, H. A. Scandrett, W. A. Robbins, and J. M. Souby for defendants.

Thomas M. Woodward for Director General of Railroads.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by the Director General, as Agent, to the report proposed by the examiner.

Complainant, a corporation engaged in the retail lumber and fuel business at Lewiston, Idaho, alleges that the charges collected by defendants on one carload of brick and six carloads of coal shipped between July 20 and December 17, 1918, from points in Idaho, Utah, and Wyoming to Cottonwood and Nezperce, Idaho, were unjust and unreasonable. We are asked to award reparation. Except as otherwise noted, rates are stated in amounts per net ton.

The brick shipment from Potlatch, Idaho, to Cottonwood moved over the Washington, Idaho & Montana, a line not under federal control, to Palouse, Wash., thence over the Northern Pacific to Joseph, Idaho, and the Camas Prairie beyond. The shipments of coal from Storrs and Standardville, Utah, to Nezperce moved over the Denver & Rio Grande, Oregon Short Line, Oregon-Washington, and Camas Prairie to Vollmer (now Craigmont), Idaho, and Nezperce & Idaho beyond. The latter line also was not under federal control. The shipment of coal from Rock Springs, Wyo., to Nezperce moved over the Union Pacific to its junction with the Oregon Short Line

and thence over the route just described. Charges were assessed at the applicable combination rates to and beyond Palouse or Vollmer.

The rates charged, which were established June 25, 1918, those in effect prior to that date, the rates to the basis of which reparation is claimed, and other data are shown in the following table compiled from complainant's exhibits:

	Commodity.	Distance.	Rate in effect June 24, 1918. ¹		Rate in effect June 25, 1918. ¹		Rate claimed. ¹	Ton-mile earnings under rates charged.
			Factors.	Total.	Factors.	Total.		
		<i>Miles.</i>						<i>Mills.</i>
Potlatch, Idaho, to Cottonwood, Idaho.	Brick....	130	{ 2 1.5 3 11	{ 12.5	{ 2 3.5 3 13	{ 16.5	14.5	25.3
Storrs and Standard- ville, Utah, to Nez- perce, Idaho.	Coal.....	1,018	{ 2 \$5.60 3 .80	{ \$6.40	{ 2 \$6.10 3 1.20	{ \$7.30	\$6.90	7.17
Rock Springs, Wyo., to Nezperce, Idaho.	Coal.....	992	{ 2 \$5.35 3 .80	{ \$6.15	{ 2 \$5.90 3 1.20	{ \$7.10	\$6.70	7.16

¹ In cents per 100 pounds, Potlatch to Cottonwood; in dollars per net ton otherwise.

² Factor to Palouse or Vollmer.

³ Factor beyond Palouse or Vollmer.

⁴ Increases provided in general order No. 28 added to through rate in effect June 24, 1918.

Both factors of the rates assailed were increased on June 25, 1918, under general order No. 28 of the Director General, by the specific amounts therein provided for rates on brick and coal. Effective August 1, 1919, the 3.5-cent factor from Potlatch to Palouse applicable on brick was reduced to 2 cents per 100 pounds, in order, it was stated, to meet competition. Effective June 1, 1919, the \$1.20 factor from Vollmer to Nezperce on coal was reduced to \$1.

Complainant submitted no evidence to show that the rates charged were unreasonable *per se*, but relies solely upon the contention that general order No. 28 was misapplied and that but one increase should have been added to the through rates in effect June 24, 1918. It calls attention to freight rate authority No. 10 of the Director General, dated July 2, 1918, which provided that the specific increases authorized in general order No. 28 should be applied to the rate for the through movement. Defendants referred to the general intent and purpose of general order No. 28, and stated that the controlling reason for the issuance of freight rate authority No. 10 was to restore former rate relationships. We have held in a number of cases where similar contentions were made that the manner in which rates are constructed is but one of the elements to be considered in reaching proper conclusions. *New York & Pennsylvania Co. v. Director General*, 58 I. C. C., 124.

Complainant's witness admitted on cross-examination that he did not consider the factors charged inherently unreasonable when applied to the separate movements. It appears from defendants' ex-

hibits that the rates assailed are not out of line with rates on brick and coal for comparable distances in the same general territory. While the 16.5-cent rate charged on the carload of brick, which was an isolated shipment, produced ton-mile earnings of 25.38 mills, this does not appear unreasonable when consideration is given to the operating difficulties encountered in that part of the route over the Camas Prairie. The record shows that the movement over this line from Culdesac, Idaho, to Vollmer, approximately 22 miles, involves grades ranging from 1 to 3 per cent, and includes seven tunnels and some 30 bridges, the latter varying from 50 to 1,500 feet in length and from 10 to 287 feet in height. The cost of constructing this piece of road, it was stated, was in excess of \$100,000 per mile and high for a branch line at the time it was built in 1908.

The tariff of the Denver & Rio Grande, which contained the factor to Vollmer on the coal shipments from Storrs and Standardville published, effective October 16, 1918, the following provision:

When the total charges on a through continuous movement of coal * * * are constructed by combination of separately established commodity rates applying to and from junction points, first determine the through combination of rates in effect on June 24, 1918, and then increase such through combination of rates by the following amounts:

Where present rate is per net ton * * * 300 cents or higher * * *
Increase per net ton * * * 50 cents.

It also provided that, where rates in "other tariffs" have not been increased since July 1, 1917, 15 cents should be added to the then existing rates. The tariff of the Nezperce & Idaho, which named the factor beyond Vollmer, published a similar provision respecting rates not increased since July 1, 1917, but did not contain the combination rule, nor was that carrier shown as a party to the Denver & Rio Grande tariff. One carload of coal originating at Storrs was shipped December 7, 1918. It weighed 71,800 pounds and freight charges thereon in the sum of \$262.07 at a rate of \$7.30 were collected. By applying the above-quoted provision to this shipment the applicable rate would have been \$7.10, constructed by adding the rates of \$5.60 to Vollmer and 80 cents beyond, the latter increased 15 cents because it had not been increased since July 1, 1917, plus 50 cents, the amount authorized by general order No. 28, increased by 5 cents under the rule for the disposition of fractions. The Oregon Short Line tariff naming the factor from Rock Springs to Vollmer contained a similar combination rule, but not until subsequent to movement of the shipment from that point. The Northern Pacific tariff, which named the component from Palouse to Cottonwood, applicable on the shipment of brick from Potlatch December 17, 1918, also contained such a rule, but prior to December 30, 1918, its application was restricted to lines under federal control.

We find that the rates assailed were not unreasonable, but that, following *Sligo Iron Store Co. v. W. M. Ry. Co.*, 62 I. C. C., 643, the rate applicable on the shipment of December 7, 1918, from Storrs to Nezperce was \$7.10 per net ton. We further find that this shipment was overcharged; that complainant made the shipment as described and paid and bore the freight charges thereon; that it has been damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rate herein found applicable; and that it is entitled to reparation in the sum of \$7.18, with interest. An appropriate order will be entered. 112

No. 11588.

ATLANTIC REFINING COMPANY

v.

DIRECTOR GENERAL, AS AGENT, LOUISIANA RAILWAY
& NAVIGATION COMPANY, ET AL.

Submitted February 18, 1921. Decided December 13, 1921.

Rate on paraffin wax, in tank-car loads, from North Baton Rouge, La., to Philadelphia, Pa., found unreasonable. Reparation awarded.

Oscar H. Price and Edward H. Porter for complainant.

A. P. Humburg and A. M. Bull for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner, but the conclusions recommended by him have been slightly modified.

Complainant, a corporation refining oil at Point Breeze, Philadelphia, Pa., alleges that the rate charged on 80 tank-car loads of paraffin wax, a petroleum product, shipped from North Baton Rouge, La., to Philadelphia, between January 31 and February 28, 1920, was and is unreasonable, unjustly discriminatory, and unduly prejudicial. We are asked to award reparation and to prescribe a reasonable rate for the future. Rates will be stated in cents per 100 pounds.

The shipments moved, as routed by the shipper, over the Louisiana Railway & Navigation to New Orleans, La.; Louisville & Nashville to

Cincinnati, Ohio; Pittsburgh, Cincinnati, Chicago & St. Louis to Pittsburgh, Pa.; and the Pennsylvania beyond. Charges were collected at the applicable joint fifth-class rate of 60 cents.

A joint commodity rate of 51.4 cents applied from North Baton Rouge to Bayonne, N. J., more distant than Philadelphia over the route of movement. Complainant asks reparation to the basis of the latter rate and the establishment for the future of a rate not higher than that to Bayonne.

Prior to February 3, 1920, the aggregate of the intermediate rates applicable over the route of movement was 51.5 cents, made up of commodity rates of 25 cents to Cincinnati and 26.5 cents beyond. On and after February 3 the aggregate of these intermediates was 51.4 cents, made up of 22.5 cents to Cincinnati and 24.4 cents beyond, plus 4.5 cents. Since December 2, 1920, the aggregate of intermediates has been 62.5 cents, 25.5 cents to Cincinnati, and 31 cents beyond, plus 6 cents. A joint fifth-class rate of 80 cents is now applicable from North Baton Rouge to Philadelphia, and to Bayonne a joint commodity rate of 68.5 cents. The departures from the provisions of the fourth section were not and are not protected and were and are unlawful.

We find that the rate assailed was, is, and for the future will be unreasonable to the extent that it exceeded, exceeds, or may exceed the aggregate of the intermediate rates to and from Cincinnati contemporaneously in effect. We further find that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rates herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with rule V of the Rules of Practice.

No. 12035.

NATIONAL REFINING COMPANY

v.

DIRECTOR GENERAL, AS AGENT, LOUISVILLE &
NASHVILLE RAILROAD COMPANY, ET AL.

Submitted July 19, 1921. Decided December 8, 1921.

Rate applicable on crude petroleum, in tank-car loads, from Beattyville, Ky., to Findlay, Ohio, found unreasonable. Reparation awarded.

Fayette B. Dow and *C. D. Chamberlin* for complainant.

John F. Finerty, Alex. M. Bull, and *E. C. Blanchard* for Director General of Railroads.

REPORT OF THE COMMISSION.

DIVISION 4, COMMISSIONERS MEYER, DANIELS, AND POTTER.

BY DIVISION 4:

Exceptions were filed by complainant and by the Director General of Railroads, as Agent, to the report proposed by the examiner, and the case was orally argued before us.

Complainant, a corporation, is engaged in producing and refining petroleum and marketing the products. Its principal office is at Cleveland, Ohio. By complaint filed December 13, 1920, it seeks reparation, alleging that the charges collected by the defendants on 37 carloads of crude petroleum shipped in tank-car loads from Beattyville, Ky., to Findlay, Ohio, between December 5, 1918, and January 14, 1919, based on rates of 43 cents and 65.5 cents were unjust and unreasonable to the extent that they exceeded charges based on a rate of 26.5 cents which became effective January 15, 1919. Rates are stated in cents per 100 pounds.

Complainant produces crude petroleum at Beattyville. The shipments, on which reparation is asked, moved from that point to Cincinnati, Ohio, over the Louisville & Nashville. From Cincinnati to Findlay, some of the shipments moved over the Cleveland, Cincinnati, Chicago & St. Louis, others over the Baltimore & Ohio, and others over the Baltimore & Ohio and the Lake Erie & Western. There was no tariff authority for the 43-cent or 65.5-cent rates charged. A combination through rate of 63 cents was applicable, composed of the fifth-class rate of 47.5 cents from Beattyville to Cincinnati and a commodity rate of 15.5 cents beyond. Some of the shipments were undercharged and others overcharged.

On January 15, 1919, the Louisville & Nashville established a proportional rate of 11 cents on crude petroleum, in tank cars, from Beattyville to Cincinnati, which, in combination with the 15.5-cent rate beyond, made a through rate of 26.5 cents. Complainant does not attack the proportional rate of 15.5 cents applicable beyond Cincinnati, which is on basis of 90 per cent of the fifth-class rate, approved by us in *C. F. A. Class Scale Case*, 45 I. C. C., 254, plus 4.5 cents, the increase authorized by the Director General in all commodity rates on petroleum in lieu of the 25 per cent increases made under his general order No. 28. It is claimed that any rate in excess of 11 cents charged as a component of the through rate for that portion of the transportation from Beattyville to Cincinnati was unjust and unreasonable, and that the charges collected are unreasonable to the extent that they are based on a through rate in excess of 26.5 cents.

Complainant and defendants submitted numerous comparisons of the through rate applicable, and of the components to and from Cincinnati, with rates on crude petroleum in the same and other sections of the country. Lack of information in the record relative to traffic and transportation conditions impairs the value of these comparisons. The through rate applicable on the shipments and that which became effective January 15, 1919, with the components thereof, distances, and revenue are shown below:

Haul.	Distance.	Period.	Rate.	Revenue per ton-mile.	Revenue per car-mile. ¹
	<i>Miles.</i>		<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Beattyville to Findlay.....	² 308	Prior to Jan. 15, 1919.....	63	4.09	108
Do.....	² 308	Subsequent to Jan. 14, 1919....	26.5	1.72	45.4
Beattyville to Cincinnati.....	156	Prior to Jan. 15, 1919.....	47.5	6.089	160.7
Do.....	156	Subsequent to Jan. 14, 1919....	11	1.41	37.2
Cincinnati to Findlay.....	² 174	Entire period.....	15.5	1.781	47

¹ Based on 8,000-gallon car and estimated weight of 6.6 pounds per gallon.

² Average of routes of movement.

Complainant refers to proportional rates of 19.5 cents in effect from Petroleum, Rodemer, and Scottsville, Ky., to Cincinnati for distances of 303 miles to 309 miles, with ton-mile and car-mile earnings ranging from 1.287 to 1.262 cents, and from 34 cents to 33.3 cents, respectively; also to proportional rates of 16.5 cents from the same points of origin to Louisville for distances of 189 miles to 195 miles, with ton-mile earnings ranging from 1.746 cents to 1.692 cents, and car-mile earnings from 46.1 cents to 44.7 cents.

Complainant also refers to a local rate of 17.5 cents from Diamond Springs, Ky., to Louisville, a distance of 140 miles, with ton-mile and car-mile earnings of 2.5 cents and 66 cents, respectively, and a rate of 20 cents from Cabin Creek Junction, W. Va., to Findlay, a distance of 409 miles, which yields 0.977 cent per ton-mile and 25.8

cents per car-mile. Rates from Cabin Creek Junction to various other destinations in central freight association territory at which refineries are located for distances ranging from 350 miles to Lima, Ohio, to 687 miles to Struthers, Pa., yield ton-mile earnings ranging from 1.2 cents to 0.64 cent and car-mile earnings from 31.7 cents to 16.8 cents.

The rates from Kansas City, Mo., Coffeyville, Kans., and Tulsa, Okla., to Findlay and the earnings based on an 8,000-gallon car and the estimated weight of 7.4 pounds per gallon used in western classification territory are shown in the subjoined table.

To Findlay, Ohio, from—	Distance.	Rate.	Earnings per ton-mile.	Earnings per car-mile.
	<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Kansas City, Mo.....	665	35	1.052	31.1
Coffeyville, Kans.....	790	38	.962	28.4
Tulsa, Okla.....	802	38	.947	28

Beattyville is one of 14 oil-shipping points in eastern Kentucky on the Louisville & Nashville. It is on a branch line of that carrier which traverses a mountainous country, where there is not much agricultural activity, and which is productive of little tonnage except coal, oil, and forest products. Prior to 1917 the oil produced in eastern Kentucky moved eastward by the Cumberland pipe line. Defendants state that in an effort to enable refineries at the Ohio River to secure some of the oil produced in that section and upon the representations of the oil producers as to what rate was necessary to induce such a movement in competition with the pipe line, a rate of 10 cents was established to the Ohio River from Irvine and Ravenna, Ky., 123 and 124 miles, respectively, from Cincinnati, effective May 25, 1917. Under general order No. 28 this rate was increased to 12.5 cents, but on September 1, 1918, it was revised so as to reflect the specific increase of 4.5 cents made by the Director General on all commodity rates in effect on petroleum on June 24, 1918. At the same time a proportional rate of 12.5 cents was established. As a result of a conference between the oil producers and officials of the Louisville & Nashville in November, 1918, a proportional rate of 11 cents and a local rate of 13 cents to the Ohio River was established from Beattyville and other oil-producing points in eastern Kentucky, effective January 15, 1919.

Petroleum is rated fifth class in southern classification territory, and defendants assert that where there is a regular movement of crude petroleum the normal basis for commodity rates in that territory is sixth class. An exhibit showing rates on petroleum in effect from Cincinnati, Louisville, and Burnside, Ky., to various destina-

tions in Kentucky and Tennessee tends to support this statement so far as the points included in the exhibit are concerned. Complainant denies that there is any percentage relation between class rates and commodity rates on petroleum in the south. The sixth-class rate in effect from Beattyville to Cincinnati when the shipments moved was 40 cents.

The following rates on crude petroleum are shown in one of the defendants' exhibits:

Haul.	Distance.	Rate.	Haul.	Distance.	Rate.
	<i>Miles.</i>	<i>Cents.</i>		<i>Miles.</i>	<i>Cents.</i>
Cincinnati to—			New Orleans, La., to—		
Big Stone Gap, Va.	290	48.5	Selma, Ala.	306	36.5
Morristown, Tenn.	322	50.5	Andalusia, Ala.	292	41.5
Chattanooga, Tenn.	336	37.5	Columbus, Miss.	300	36.5
Louisville to—			Memphis, Tenn., to—		
Big Stone Gap, Va.	275	48.5	Talladega, Ala.	327	38
Morristown, Tenn.	308	50.5	Sylacauga, Ala.	304	49.5
Chattanooga, Tenn.	314	37.5	Selma, Ala.	328	38

Defendants refer to rates on petroleum and petroleum products from Cincinnati and Louisville to Kentucky points approved in *Petroleum to Kentucky Stations*, 43 I. C. C., 35. These rates, plus an increase of 4.5 cents, range from 20.5 cents to 23.5 cents for distances from 70 to 96 miles from Cincinnati, and from Louisville, 15.5 cents to 23.5 cents for distances from 65 miles to 106 miles.

Defendants contend that the 11-cent rate from Beattyville to Cincinnati is subnormal and was established for experimental purposes without regard to the traffic and operating conditions that are usually considered in making rates. In this connection they direct attention to the fact that notwithstanding we have recognized that differences in transportation conditions north and south of the Ohio River warrant a higher level of rates south of the river than in the territory north of it, the ton-mile and car-mile earnings yielded by the 11-cent component south of the Ohio River are less than they are under the rate of 15.5 cents from Cincinnati to Findlay, a longer haul.

In *Standard Oil Co. v. Director General*, 60 I. C. C., 449, we found that the fifth-class rates of 40 cents and 50 cents applied on crude petroleum shipped in tank-car loads to Louisville during the period between October 25, 1918, and February 20, 1920, from Bowling Green, Ky., and Rugby Road, Tenn., respectively, were unreasonable to the extent that they exceeded rates of 14.5 cents and 17.5 cents respectively. It is approximately 113 miles from Bowling Green and 200 miles from Rugby Road to Louisville.

We find that the through rate applicable on the shipments was unreasonable to the extent that the component thereof from Beattyville 64 I. C. C.

to Cincinnati exceeded 16.5 cents; that complainant made the shipments as described and paid and bore the charges thereon and was damaged in the amount of the difference between the charges paid by it and charges based on a through rate of 32 cents. Complainant should comply with rule V of the Rules of Practice, giving consideration to the outstanding overcharges and undercharges.

POTTER, *Commissioner*, dissenting:

I dissent on the ground that the Beattyville to Cincinnati component of the through rate should not have exceeded 11 cents.

64 I. C. C.

No. 7865.

CHAMBER OF COMMERCE OF JOHNSON CITY, TENN.,
v.
SOUTHERN RAILWAY COMPANY, DIRECTOR GENERAL,
ET AL.

Submitted October 8, 1920. Decided December 12, 1921.

1. Upon further hearing, original finding to the effect that under the existing rate adjustment there is undue prejudice to Johnson City, Tenn., and undue preference of Bristol, Va.-Tenn., reaffirmed.
2. Defendants' plan for equalizing rates from Ohio River and Mississippi River crossings and beyond, from central and Buffalo-Pittsburgh territories, and from Memphis and Nashville, Tenn., to Johnson City and Bristol, and for revising rates to intermediate and related destinations, found not justified.
3. Bases prescribed for just and reasonable maximum interstate class rates from those originating points and territories to Johnson City and Bristol, and to intermediate and related destinations. Bases indicated for revision of commodity rates from and to the same points.
4. Relief granted from the long-and-short-haul provision of the fourth section of the act on certain traffic moving over the Norfolk & Western via Walton, Va.
5. Former reports: 46 I. C. C., 527, and 50 I. C. C., 605.

William A. Wimbish and *W. N. McGehee* for complainant.

Charles J. Rixey, jr., Alex. M. Bull, and *D. Lynch Younger* for defendants.

E. K. Bachman for Southwest Virginia Shippers' Association, intervener.

T. Gordon Strachan and *Mason Manghum* for State Corporation Commission of Virginia.

REPORT OF THE COMMISSION ON FURTHER HEARING.

HALL, Commissioner:

Exceptions were filed by complainant, intervener, and defendants to the report proposed by the examiner. We have reached conclusions differing from those recommended by him.

In the original complaint in this case complainant attacked all class and commodity rates to Johnson City, Tenn., from the Ohio River and Mississippi River crossings and beyond, also from central and Buffalo-Pittsburgh territories, as unreasonable, unduly preju-

dicial to Johnson City, and unduly preferential of Bristol, Va.-Tenn. In our original report, 46 I. C. C., 527, decided July 17, 1917, we said:

In the light of the facts appearing of record, we find the rates complained of to be not unreasonable. Nor does the record justify us in prescribing to Johnson City rates on a basis lower than it now enjoys. * * * Upon the facts of record we conclude and find that the present class and commodity rates on traffic moving from Cincinnati, or through Cincinnati from beyond, to Johnson City either by way of St. Paul or Speer's Ferry [Va.] subject Johnson City to undue prejudice and disadvantage and are unduly preferential of Bristol, within the meaning of section 3 of the act to regulate commerce, to the extent that such rates to Johnson City exceed the rates to Bristol. An appropriate order will be entered to give effect to these conclusions.

Defendants proposed to comply with our order by increasing generally the Bristol rates to the Johnson City basis, but in their applications seeking approval thereof as then required, in the case of increases, by the fifteenth section of the act to regulate commerce, they asked that our order be modified so as to except certain important commodity rates. One defendant, the Carolina, Clinchfield & Ohio, did not join with the others in seeking this modification and protested against it. Upon request of Bristol and other southwestern Virginia cities for a formal hearing upon the fifteenth section applications the case was reopened, but solely with respect to the reasonableness of the rates proposed to Bristol, Johnson City, and other near-by points. In our report on rehearing, 50 I. C. C., 605, decided June 17, 1918, we affirmed the findings in our original report to the effect that under the rate situation then existing there was undue prejudice to Johnson City and undue preference of Bristol. We made no finding upon the fifteenth section applications because increases in those rates under general order No. 28 of the Director General of Railroads were to become effective within a few days, but said:

General Order No. 28, however, does not affect our former finding that Bristol and Johnson City should be on a rate parity from the territory involved in this proceeding; and an appropriate order will be entered to give effect to that finding.

At the request of the Director General the effective date of this order was successively postponed until July 1, 1919. Upon joint petition of the Chamber of Commerce of Johnson City and the Southwest Virginia Shippers' Association, of which Bristol is a member, we again reopened the case on June 12, 1919, for further hearing, and, on June 20, 1919, vacated the order of June 17, 1918. By our order of September 10, 1919, we permitted amendment of the complaint. This was done in accordance with the supplemental complaint filed by complainant, by which it prayed that the Director General be made a party defendant and that, after further hearing, we order

the removal of the undue prejudice to Johnson City theretofore found to exist by prescribing just, reasonable, and equal rates from all points and territories of origin described in the original complaint to both Johnson City and Bristol.

The case has been further heard at length, and has been exhaustively briefed by the parties. Rates will be stated in amounts per 100 pounds. Those referred to as present rates do not include the general increases authorized by us on July 29, 1920.

Defendants have worked out and submit for approval an elaborate and comprehensive plan for equalizing the rates here in issue to Johnson City and Bristol. This plan also contemplates corresponding changes in related rates from and to other points not directly brought in issue by the supplemental complaint. Rates to Johnson City and Bristol have heretofore been governed for the most part by the southern and official classifications, respectively, and in some instances by either classification under tariff provisions for alternate use. To equalize these rates without unduly disturbing general adjustments or impairing individual rights presents a complicated and difficult problem.

Incidental and contemporaneous revision of rates to points on lines leading to Johnson City and Bristol, and also on branches of those lines to harmonize with the revised rates to Johnson City and Bristol, is obviously necessary under any plan. Evidence concerning the rates so proposed under defendants' plan was introduced by the parties. Such rates will be considered as in issue and provided for in the findings, but discussion will be confined in the main to the rates to Johnson City and Bristol.

The plan submitted is fully described in the record, with illustrations indicating its effect upon the various rates, but it need not be discussed in detail. We will refer to a few of the more important features.

The fundamental basis, the same as that proposed in the fifteenth section applications, is to construct rates as heretofore from the originating territories to Johnson City upon the lowest combination on the Mississippi or Ohio river crossings, Kenova group, or Virginia gateways, and to apply to Bristol the rates thus obtained, the new Bristol rates to be governed generally, as are those to Johnson City, by the southern classification. Walton and St. Paul, Va., are the nearest points to Johnson City which take the Virginia gateways' rates on this traffic. For reasons hereinafter stated, defendant Norfolk & Western intends to restrict routing under the proposed joint rates so that traffic over its line to Bristol and Johnson City from the crossings and group, as well as traffic to destinations on the Southern between Bristol and Johnson City from the crossings and

group, or from beyond when the applicable rates are combinations on the crossings or group, will move only over the route via St. Paul and the Carolina, Clinchfield & Ohio, thereby closing its circuitous route via Walton.

FROM OHIO AND MISSISSIPPI RIVER CROSSINGS AND RELATED ORIGINS, INCLUDING ST. LOUIS, MO., AND GROUP, MEMPHIS AND NASHVILLE, TENN.

Under the present and proposed adjustments Louisville, Ky., takes the same rates as Cincinnati to Johnson City and Bristol, respectively. The Ohio River crossings west thereof, Evansville, Ind., to Cairo, Ill., inclusive, and the St. Louis, Mo., group, take differentials higher on the basis of what are known as the Carolina differentials. Rates from Memphis and Nashville, Tenn., which were not originally in this case, are also made with relation to the rates from Cincinnati and are therefore included in the proposed adjustment. The evidence with respect to all these rates deals chiefly with the rates from Cincinnati and, to a lesser extent, from Louisville.

The following table shows the present class rates. Those to Johnson City are proposed for application to Bristol also.

	Short-line distance.	Classes.										Classification.
		1	2	3	4	5	6	A	B	C	D	
Cincinnati to—	<i>Miles.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	
Johnson City....	363	126.5	109	86.5	67.5	57.5	46.5	37.5	52.5	35	30	Southern. Official. Southern.
Bristol.....	364	109.5	90.5	68	50.5	43	35	33	38	31	31	
Evansville-Cairo to—		129.5	112.5	88	68	54.5	44.5	53	38	31	31	
Johnson City....	514-575	139	121.5	96.5	77.5	65	51.5	40	57.5	37.5	32.5	Southern. Official. Southern.
Bristol.....	497-551	129.5	112.5	85	60	51.5	42	55.5	43	33.5	33.5	
St. Louis to—		142	125	98	78	62	49.5	55.5	43	33.5	33.5	
Johnson City....	644	167.5	145	114	86.5	74	59	49	67.5	46.5	39	Southern. Official. Southern.
Bristol.....	622	143	124.5	94	66.5	55.5	46.5	64.5	53	42.5	40	
Memphis to—		171	149	115.5	87	70.5	57	64.5	53	42.5	40	
Johnson City....	527	139	121.5	96.5	77.5	65	51.5	40	55	32.5	27.5	Southern. Southern.
Bristol.....	552	142	125	98	78	62	49.5	55.5	40.5	28.5	28.5	
Nashville to—												
Johnson City....	323	119	102.5	82.5	64	54	42.5	35	50	32.5	27.5	Southern. Southern.
Bristol.....	347	122	106.5	84	64.5	50.5	40.5	50.5	35.5	28.5	28.5	

It is proposed to cancel all class rates now published to Bristol, including those governed by the official classification, and also the alternative basis, now provided for making rates to Johnson City on Bristol combination, which authorizes the use of rates to Bristol governed by the official classification and local rate beyond governed by the southern classification.

Defendants say that rates from the Ohio River to Johnson City are based on the Bristol combination in the majority of instances

and are therefore lower than they might properly be except for their reflection of the subnormal rates to Bristol. The various routes and distances are set forth in our original report. Defendants compare the class rates to Johnson City with the lowest class-rate combinations from Cincinnati to Johnson City and Bristol by way of the Louisville & Nashville and Southern routes, which are based on Appalachia, Va., Knoxville, Harriman Junction, or Jellicoe, Tenn., and are materially higher. They refer to *Lebanon Commercial Club v. L. & N. R. R. Co.*, 35 I. C. C., 204, in which we prescribed, for use in constructing combination rates on interstate shipments, a maximum class scale of 35 cents first class between Louisville and Lebanon, Ky., 67 miles, with a view to reasonable grading up of the rates to and from adjacent territories having different rate bases, a situation not unlike that here presented. The 35-cent scale increased by 25 per cent under general order No. 28 becomes a 44-cent scale, and 44 cents added to the first-class rates from Cincinnati to Appalachia, Knoxville, Harriman Junction, and Jellicoe would produce higher rates than those proposed to Bristol and Johnson City, although the distances beyond the basing points in every instance considerably exceed 67 miles.

Commodity rates from the river crossings and related points to Johnson City and Bristol are also made with regard to corresponding rates from Cincinnati, and whatever changes are finally made in the latter will be reflected in the rates from related points. Defendants propose to cancel the present commodity rates to Johnson City from Cincinnati on certain articles to which, they say, commodity rates are not ordinarily accorded in southeastern territory, or of which there is no movement. Class rates would then become applicable. They say that in most instances such commodity rates were originally established because the combination of the class rates to Bristol under official classification and beyond under southern classification was lower than the through individual or joint class rates. The commodity rates not so canceled are to be applied also to Bristol, and are to supplant the present commodity rates to that point.

A majority of the changes would result in increases and include increases on such commodities as coal and coke, tinware, hardware, and certain iron and steel articles. Far more changes would be made to Bristol than to Johnson City, and most of them would be increases, including the cancellation of several commodity rates.

Defendants introduced numerous exhibits comparing the class and commodity rates proposed from Cincinnati and Louisville to Bristol and Johnson City with many rates from Ohio and Mississippi river crossings, the Virginia cities, and Gulf and south Atlantic ports to points in the southeast and the southwest, and between

points in the southeast; also with rates prescribed by us in various cases. Similar comparisons were made with the rates proposed from Memphis and Nashville. The rates used in those comparisons are generally higher, distance considered, than the rates so proposed. Defendants also introduced exhibits showing the extent to which the rates from Cincinnati and Louisville to intermediate points on the Louisville & Nashville and Southern would be reduced in order to comply with the fourth section if the present Bristol rates were extended to Johnson City, and further comparisons purporting to show the reasonableness of the present rates to those intermediate points.

Many statistical exhibits indicate that transportation conditions are more favorable north of the Ohio River than south thereof, and show increases in the operating expenses of the southern carriers which, they assert, militate against any decreases in revenue such as would result from applying the present Bristol rates to Johnson City. Defendants also contend that if this were done points south of Johnson City would attack its rates upon the same grounds as those used by Johnson City in attacking its present rate relationship to Bristol.

FROM KENOVA, W. VA., AND GROUP.

This group includes Kenova and Huntington, W. Va., Ashland, Ky., Portsmouth and Ironton, Ohio, and points taking the same rates, and Norfolk & Western and Chesapeake & Ohio stations intermediate thereto.

Defendants state that as part of a general readjustment of rates from the Ohio River crossings to the entire southeast, determined upon at the beginning of federal control, it was decided to construct rates from the Kenova group differentially under those from Cincinnati. That readjustment is not strictly a part of this proceeding, but since it included some of the points here dealt with the portion thereof relating to Johnson City was made a part of the plan now under consideration.

No uniformity exists in the present rates from the different points in this group. The distances are considerably less than from Cincinnati and the rates are generally higher. The proposed basis for class rates, governed by the southern classification, from the Kenova group to Johnson City is the following scale of differentials under the Cincinnati rates:

Classes -----	1	2	3	4	5	6	A	B	C	D
Differentials -----	10	10	10	8	7	6	4	4	4	4
Proposed rates -----	116.5	99	76.5	59.5	50.5	40.5	33.5	48.5	31	26

Commodity rates are to be made 4 cents under the corresponding Cincinnati rates, observing as minima the present commodity rates

from Kenova to Bristol, except that the rates from Cincinnati to Johnson City will not be exceeded. The class and commodity rates so obtained are to be applied to Bristol.

To Johnson City the present class rates are subject to the southern classification. The proposed basis would result in increases of 1 cent on first class and 6 cents on class B from Portsmouth; all other class rates would be reduced by amounts ranging from 1 to 24 cents. To Bristol all class rates would be increased and governed by the southern instead of the official classification. In commodity rates there would be some reductions to Johnson City and both increases and reductions to Bristol.

In support of the proposed rates from the Kenova group defendants rely upon the justification offered for the rates proposed from Cincinnati. They also show that fourth section departures in rates from certain points in the group would be eliminated.

FROM CENTRAL TERRITORY ON AND WEST OF THE CLEVELAND-BELPRE LINE.

The usual basis for rates from central territory to southeastern territory, in which both Johnson City and Bristol are located, is combination on the Ohio River. Bristol is now an exception.

For many years rates to Bristol from the New York-Chicago percentage group points in central territory on and west of the Cleveland-Belpre line,¹ exclusive of Ohio River crossings, points taking the same rates, and the Kenova group, have been constructed by adding certain arbitraries to the rates from the same percentage points to the Virginia cities, the rates and arbitraries being governed by official classification. Prior to the increases under general order No. 28 the class arbitraries were upon a scale of 12 cents, first class; from June 25, 1918, until December 31, 1919, of 15 cents; and since, of 17.5 cents. The latter scale is the same as that of the lowest interstate distance rates published by the Norfolk & Western, applicable for hauls of 5 miles or less. These distance rates are subject to the minimum rates provided in general order No. 28 on traffic moving under class rates upon a scale of 25 cents first class. The distance from Walton to Bristol is 110 miles.

As stated in our original report, the circumstances surrounding the establishment of these rates and arbitraries have been fully described in other proceedings, and extended discussion of them is

¹ The Cleveland-Belpre line, entirely in Ohio, is Cleveland and Pittsburgh division of Pennsylvania Lines West, Cleveland to Hudson; Cleveland, Akron & Columbus Railroad, Hudson to Akron; Baltimore & Ohio Railroad, Akron to Canton and Canton to Valley Junction; Marietta division of Pennsylvania Lines West, Valley Junction to Canal Dover; Baltimore & Ohio Railroad, Canal Dover to Uhrichsville; Pittsburgh, Cincinnati, Chicago & St. Louis Railroad, Uhrichsville to New Comerstown; Marietta division of Pennsylvania Lines West, New Comerstown to Marietta; and Baltimore & Ohio Southwestern Railroad, Marietta to Belpre.

unnecessary. The southern lines as well as the Norfolk & Western have always been of opinion that the Virginia cities rates, originally established by the Chesapeake & Ohio, were lower than they might reasonably be. The rates to Bristol, made by adding comparatively low arbitraries to the Virginia cities rates, were established over the objection of the southern lines. These lines regarded the rates so made as extremely low, and did not meet them over their routes to Bristol for some time after the Norfolk & Western established them. Despite continuing protests of the southern carriers, the Norfolk & Western was content to maintain this basis on its own line, but since we have found that the rates to Johnson City and Bristol should be on a parity it is prepared to increase the Bristol rates in conformity with the wishes of those carriers rather than to shrink its revenue by the amount of the Southern's division of the joint rate beyond Bristol, which would be the result if the present Bristol rates were applied to Johnson City.

Defendants contend that Johnson City, 135 miles from Walton, has benefited in a measure by the projection of low trunk line rates and the official classification basis into southeastern territory at Bristol, that is to say, in instances where the Southern's rates from Bristol, on a scale of 32.5 cents first class, governed by southern classification, when added to the rates to Bristol, made combinations to Johnson City lower than the rates constructed on the Ohio River. This is true generally of rates from points in central territory on the Cleveland-Belpre line or between that line and what is roughly termed the Chicago-Cincinnati line.

Defendants propose to continue to Johnson City the basis described for making class rates from central territory on and west of the Cleveland-Belpre line, to apply like rates to Bristol, and, in lieu of the present method of publishing rates beyond points taking the Virginia cities rates, to establish proportional class rates from Walton and St. Paul. St. Paul takes Virginia cities rates on traffic for beyond. In constructing these proportional class rates defendants added to the scale of arbitraries Bristol over Virginia cities, beginning at 15 cents, first class, the Southern's rates beyond beginning at 32.5 cents, first class. The resulting rates, to be governed by the southern classification, are:

Classes-----	1	2	3	4	5	6	A	B	C	D
Rates-----	47.5	42.5	37.5	31.5	27.5	21.5	21.5	25.5	19	19

Proportional commodity rates, in carloads, are also proposed on brick, cement, clay, earthenware and stoneware, grain and grain products, hay, special iron, iron or steel rails, lime, live stock, wall plaster, railway track material, and salt.

To justify the rates which would result from this adjustment defendants compared those on the numbered classes from Cleveland and Toledo, Ohio, and Detroit, Mich., to Johnson City and Bristol with the present rates, made on Ohio River combinations, from the same points of origin to other destinations in eastern Tennessee. Distance considered, the comparison is favorable to the rates proposed.

In support of the 47.5-cent scale of proportional rates defendants again refer to the *Lebanon Commercial Club Case*, *supra*, and to a number of rates prescribed by us for proportional application, increased 25 per cent, ranging on first class from 42.5 cents, Knoxville to Morristown, Tenn., 42 miles, to 62.5 cents, Roanoke, Va., to Winston-Salem, N. C., 122 miles.

FROM CENTRAL TERRITORY EAST OF THE CLEVELAND-BELPRE LINE AND
FROM BUFFALO-PITTSBURGH TERRITORY.

These territories overlap to a large extent. Their eastern boundaries are the same as far south as the middle of Pennsylvania; thence the Buffalo-Pittsburgh territory boundary turns southeastwardly to include southwestern Pennsylvania, western Maryland, and West Virginia north of the Baltimore & Ohio's line from Parkersburg east.

In making rates to Bristol from central territory east of the Cleveland-Belpre line and from Buffalo-Pittsburgh territory a method is used different from that applied from territory west thereof. As stated, from the latter the New York-Chicago percentage-group rates apply. Defendants point out that although that grouping embraces also this part of central territory, the group rates are designed for an east-and-west adjustment under which rates decrease with lessening distance to the eastern seaboard. Not so as to Bristol. When eastern central territory is reached the movement is distinctly south and the distances to Bristol are greater than from central territory west of the Cleveland-Belpre line. If the lessening rates under the New York-Chicago scale, added to the small arbitraries over Walton, were applied on such movements, the resulting rates would be lower than those for shorter distances from Baltimore, Md., and other eastern points. The Cleveland-Belpre line was therefore set up years ago as a partition in the rate structure in order to avoid any such maladjustment.

BUFFALO-PITTSBURGH TERRITORY.

The basis for constructing joint rates, class and commodity, to Bristol from Buffalo-Pittsburgh territory, including the overlapped portion of eastern central territory, has been that they should not be lower than the rates from Baltimore or higher than the lowest

combination, except that from the Pittsburgh district rates on special iron are made the same as from Cleveland, and on steel rails the same as from Lorain, Ohio. These special adjustments grew out of active competition between shippers in the Pittsburgh district and those at Cleveland, Lorain, and other points.

Defendants state that for many years the general basis for rates from Buffalo-Pittsburgh territory to southern destinations has been the lowest combination on the Ohio River or Virginia gateways. To Johnson City this was made on Bristol. Joint rates on classes and commodities were formerly published to Johnson City on that basis and continued without change except for the increase under general order No. 28. Meanwhile the rates to Bristol had been increased also under *The Five Per Cent Case*, 31 I. C. C., 351; 32 I. C. C., 325; and, in some tariffs, under *The Fifteen Per Cent Case*, 45 I. C. C., 303, before taking the increase under general order No. 28. The present rates to Johnson City are therefore lower than the Bristol combinations. Another complication is presented in the existing class rates to Bristol. These are published in separate agency tariffs for official and southern classification lines, respectively. The rates in the former were increased under *The Fifteen Per Cent Case*, but through oversight those in the latter were not. There are thus two scales of class rates to Bristol, in one of which first class is \$1.305 and in the other \$1.23.

Defendants propose in their plan to restore joint class rates to Johnson City from Buffalo-Pittsburgh territory on the original basis of the lowest combination, using as factor to Bristol the higher \$1.305 scale. The resulting rates are to be governed by the southern classification and are to apply to Bristol as well as to Johnson City, with the proviso that, if a lower rate on any article would result from application of a combination rate to Bristol based on Roanoke and governed by the official classification, such lower rate will apply both to Bristol and to Johnson City. This alternative basis is provided in order to avoid fourth section departures. The short-line distances and the present, proposed, and alternative rates from Pittsburgh to Johnson City and Bristol are:

To—	Dis- tance.	Sta- tus.	Classes.										
			1	2	3	4	5	6	A	B	C	D	
	<i>Miles.</i>		<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	
Johnson City	542	(a)	146.5	126.5	100	74	65	49	49	50	46.5	46.5	S.
Bristol	543	(a)	123	105	79	55.5	48	37.5	.....	.....	.....	.....	O.
Johnson City and	}	(b)	163	140	111.5	81.5	71.5	54.5	54.5	68	52	52	S.
Bristol		(c)	157.5	136	105	72.5	58.5	47.5	.....	.....	.....	.....	O.

a Present rates.

b Proposed rates.

c Proposed alternative rates, combination on Roanoke.

S. Governed by southern classification.

O. Governed by official classification.

Although the combination rates on Roanoke on the respective classes are in each instance lower than the proposed joint rates they would not apply generally because on many articles the ratings in the southern are one or more classes lower than in official classification.

Defendants compared the proposed class rates with rates from Pittsburgh to a few points in the southeast and between a number of points in southern territory. Distance considered, the comparisons are favorable to the rates proposed.

A similar situation exists with respect to commodity rates, including rates on special iron and on steel rails, and defendants propose a similar adjustment, contending that otherwise many inconsistencies will be retained, and that the rates to Johnson City, by reason of its proximity to Bristol, are and have been lower than if made upon the usual combination basis.

FROM CENTRAL TERRITORY BETWEEN CLEVELAND-BELPRE LINE AND BUFFALO-PITTSBURGH TERRITORY.

This comprises the portion of eastern central territory not overlapped by Buffalo-Pittsburgh territory, and lies between the Cleveland-Belpre line and Buffalo-Pittsburgh territory, embracing the extreme northwestern corner of Pennsylvania west of Erie, and eastern Ohio except a few points adjacent to the Ohio-Pennsylvania state line. There are no joint rates from this portion to Johnson City and Bristol. Lowest combinations apply, generally based on the Kenova group or Ohio River. Any rate change would merely reflect the revised rates from the river or group.

PROPOSED CLOSING OF WALTON ROUTE ON CERTAIN TRAFFIC MOVING OVER THE NORFOLK & WESTERN.

On traffic to Bristol and Johnson City, and to destinations on the Southern between those points, moving over the Norfolk & Western from St. Louis and group, from the Kenova group, and from Ohio River crossings, also from beyond where applicable combinations base thereon, the proposed rates are to apply only via St. Paul and the Carolina, Clinchfield & Ohio. The effect would be the closing of the Norfolk & Western's circuitous route via Walton under the rates from that group and the crossings.

Defendants explain that this is essential in order to avoid departures from the long-and-short-haul provision of the fourth section after their contemplated revision is made effective. It grows out of the proposed adjustment of the rates from central territory on and west of the Cleveland-Belpre line, including the Ohio River crossings, to the Norfolk & Western's local stations on its Bristol division extending southwest from Walton to Bristol. All stations on that division now take the same rates as Bristol from the originating ter-

ritory mentioned. As stated, defendants propose to apply from that territory, exclusive of the river crossings, the Virginia cities rates plus the 47.5-cent proportional scale on traffic to Bristol and Johnson City and to destinations on the Southern between those points. From the river crossings rates beginning with \$1.265 first class are to apply. From that territory, including the river crossings, to intermediate local stations on the Bristol division this scale, governed by the official classification, is to be graded down with the lessening distance to 15 cents first class for the first 5 miles southwest of Walton. The proposed rates from the river crossings to those stations will thus be higher than the proposed rates to Bristol and the other destinations mentioned. For example, under defendants' plan the first-class rate from Cincinnati to Abingdon, Va., would be \$1.395, compared with \$1.265 to Bristol, 14 miles southwest thereof. The first-class rate from Cincinnati to Walton is 95 cents.

This situation exists only on traffic from the Ohio River crossings and the Kenova group and origins taking combinations based thereon, and not on traffic from other points in central territory. It is due to the fact that the rates from the crossings and group to the Bristol division stations were increased under *The Five Per Cent Case* and *The Fifteen Per Cent Case*, while like increases were not authorized in the rates to Johnson City.

It was stated for the Norfolk & Western that while the distances over the Walton route are greater than via St. Paul and the Carolina, Clinchfield & Ohio, the operating conditions are better, and that it would prefer to keep open the Walton route if we would grant fourth section relief.

The distances to Bristol from Cincinnati and representative points in the Kenova group are:

To Bristol from—	N. & W. via St. Paul, and C., C. & O.	N. & W. via Walton.	Short line.
	Miles.	Miles.	Miles.
Cincinnati, Ohio.....	457	520	364
Portsmouth, Ohio.....	350	413	285.9
Ironton, Ohio.....	323	386	258.9
Ashland, Ky.....	318.9	381.9	255.1
Huntington, W. Va.....	318.3	381.3	259.6
Kenova, W. Va.....	311	374	252.3

The routes to Bristol via Walton are thus 63 miles longer than via St. Paul and range from 142.9 to 148.2 per cent of the respective distances over the short lines. The routes via Walton to Johnson City are 25 miles longer than to Bristol; via St. Paul and over the short lines the routes to Johnson City are 1 mile shorter than to Bristol.

COMPLAINANT'S EVIDENCE.

Complainant was represented at the last hearing by counsel, who cross-examined defendants' witness, but produced no witnesses. The only exhibit introduced on its behalf was a copy, furnished by defendants upon complainant's demand, of the minority report, dated December 27, 1918, signed by the two shippers' members of the southern freight traffic committee, disagreeing with the recommendations of the majority that the equalization of the rates to Johnson City and Bristol in accordance with our finding be effected in substantially the manner now proposed, and recommending that the Johnson City rates be reduced to the Bristol level. The minority report contains a history of this case and arguments and rate comparisons in support of the views of its authors.

INTERVENER'S POSITION.

Members of the intervening association are located at points on the Norfolk & Western's Bristol division and on branches connecting therewith, Bristol being the largest and most important of these points. They are naturally concerned over the material increases proposed and insist that defendants' plan be disapproved. The intervener contends on their behalf that Bristol is entitled to the benefit of its location on the Norfolk & Western; that its present rates have been voluntarily made upon a basis maintained by that carrier for a long period of years, this indicating their reasonableness; and that our requirement of parity should be met by reducing the Johnson City rates. It urges that the rates to Bristol have been increased materially as a result of the 5, 15, and 25 per cent increases. This is pertinent only in cases where Johnson City is accorded joint rates. From most points of origin here considered the rates to Johnson City are combinations which, when based on Bristol, were increased in like amounts as the Bristol rates and, when based on the river crossings or the Kenova group, were affected to the extent that the factors north thereof were affected by the successive increases. The intervener points out that the further increases now proposed will result in a first-class rate to Bristol from Pittsburgh, for example, 28 per cent higher than the present rate and 82 per cent higher than the rate in effect when the original complaint was filed.

Reference is made to the willingness at all times expressed by the Carolina, Clinchfield & Ohio to participate in rates to Johnson City on the Bristol basis. In our original report we said:

In fixing reasonable rates their effect on the general prosperity of all the carriers serving that section should be considered; and in weighing the reasonableness of the rates to Johnson City we must consider the effect of those rates

not only upon the Clinchfield but also upon the Cincinnati, New Orleans & Texas Pacific, the Southern, the Louisville & Nashville, Norfolk & Western, Chesapeake & Ohio, and the other carriers serving the territory in which Johnson City is located.

The intervener criticizes defendants' exhibits, which generally compare the rates proposed with rates applicable between points in southern territory, because they omit rates between points in official territory, the basis heretofore accorded to Bristol, and contends that such comparisons would prove the reasonableness of the Bristol rates.

The class rates proposed from Cincinnati to Bristol and Johnson City are compared with miscellaneous rates between other points which are upon a lower basis, but which, in the majority of instances at least, may not for various reasons be taken as a proper measure of the reasonableness of the rates to Johnson City and Bristol. These include class rates from Cincinnati to Winston-Salem, Durham, and other points in North Carolina, which are on a scale of \$1.025 first class for distances ranging from 591 to 693 miles; and class rates from Cincinnati, Memphis, Chattanooga, and Nashville to the Virginia cities and points on the Shenandoah Valley division of the Norfolk & Western, extending northeast from Roanoke to Hagerstown, Md. The comparatively low level of rates from Cincinnati to the Carolinas, based on proportional rates to the Virginia cities which reflect the trunk line adjustment from Chicago to New York, added to proportional rates southbound established as a result of a compromise with the authorities of the state of North Carolina, has been discussed at length in other cases. The existence of rates to these points lower than to Johnson City is true only from Cincinnati and not from points in central territory north of the river, and a revision upward is in contemplation by the carriers. That the Virginia cities rates are also low has been recognized by us. Defendants say that the rates on the Norfolk & Western's Shenandoah Valley division, which are practically on the Virginia cities basis, are held to their present depressed level as a result of the competitive influence of the Baltimore & Ohio and the Chesapeake & Ohio, which operate through the same general territory served by that division, and cross it at several points.

Class rates and special iron rates are instanced from Pittsburgh to points in North Carolina and Virginia, and rates on iron and steel articles from Birmingham, Ala., to Ohio River crossings and Virginia cities which are lower, and in some instances for greater distances, than those proposed from Buffalo-Pittsburgh territory to Bristol and Johnson City. With respect to these rates from Pittsburgh, defendants say that they are based upon the low proportional rates applicable in connection with the Pennsylvania and the

Baltimore & Ohio to Richmond, Va., and are lower than they would be if made over the Norfolk & Western. The northbound Birmingham rates are said by defendants to have been established upon an abnormally low level in order to allow iron and steel articles from the Birmingham district to reach the principal markets for such products in central territory in competition with similar articles produced much nearer to those markets.

Intervener compares the 47.5-cent scale of proportional rates proposed from Walton to Bristol and Johnson City with arbitraries, differentials, and proportionals now used in constructing rates to other destinations, of which the following are submitted as typical on first class: Knoxville over Bristol for Norfolk & Western stations, 131 miles, 31 cents; Cincinnati over Roanoke for Winston-Salem, 454 miles, 40 cents; Memphis over Nashville for North Carolina and Virginia points, 237 miles, 17.5 cents. It directs attention to defendants' proposed first-class differential of 10 cents, Kenova under Cincinnati, for a difference in distance given as 125 miles. The intervener contends that defendants' proposal to make the proportional scale from Walton to Bristol subject to the southern classification, and gradations thereof to intermediate stations on the Bristol division subject to the official classification, will in some instances create undue prejudice to Bristol and result in fourth section departures.

One of intervener's exhibits shows that combinations of the class rates from Pittsburgh to Roanoke and the intrastate rates to Bristol are lower than the rates proposed to Bristol, and that the combinations from Pittsburgh to Roanoke plus the intrastate rates to stations on the Norfolk & Western's Bristol division are lower than the proposed rates to Bristol plus the intrastate rates to the same points, thus giving Roanoke an advantage over Bristol from a jobbing standpoint. We have repeatedly said that these so-called jobbing exhibits made up of combinations of inbound and outbound rates are of little probative value where only the inbound or the outbound rates are under attack.

The intervener directs attention to the fact that it is not proposed at this time to increase the rates to points on the Clinch Valley division of the Norfolk & Western extending southwest from Bluefield, W. Va. Rates to stations on that division are now made upon the arbitrary scale of 17.5 cents first class over the Virginia cities, in the same way as to Bristol, and are not here in issue.

Upon oral argument counsel for intervener, in urging that the Johnson City rates be reduced to the Bristol level for the purpose of bringing about a parity, called attention to the fact that under the increases authorized by us on July 29, 1920, the rates to the former

had been increased $33\frac{1}{3}$ per cent and to the latter 40 per cent, thereby reducing the differences between them. This has reference only to origins beyond the Ohio River from which joint rates apply to Johnson City; but as these rates are in every instance higher than those to Bristol, application of the greater percentage increase to the lower rate and the lesser percentage increase to the higher rate affects the spread but little, if at all. Thus, the spread in the first-class rate from St. Louis was reduced thereby from 24.5 to 23.5 cents and from Buffalo-Pittsburgh territory there was no change. In fact, the spread in rates from points in central territory taking combinations to Johnson City and joint rates to Bristol became greater; thus, from Chicago and Cleveland, it was increased from 32.5 cents to 40.5 cents. Pronounced decreases occurred in the spreads between the rates from the Ohio River because the rates to Johnson City were increased but 25 per cent. From Cincinnati the spread in the first-class rates was reduced from 17 to 4.5 cents.

DEFENDANTS' JUSTIFICATION FOR INCREASING BRISTOL RATES TO
JOHNSON CITY LEVEL.

Defendants' main reliance in proposing these rates is upon the facts that in our original report we found that the rates assailed to Johnson City were not unreasonable and that a reduction thereof was not justified; that in our report on rehearing we affirmed the original findings, the rates then in effect to Johnson City being the same as the present rates except for the increases under general order No. 28, which are not attacked; and that in our report on rehearing, in which we considered a proposal to readjust the rates to Bristol and Johnson City upon substantially the same basis as here presented, we did not criticize that method, but refrained from making a finding upon the fifteenth section applications because of the controlling effect of the Director General's increased rates which were shortly to be established. They admit that the adjustment proposed will materially increase their revenues. Defendants also refer to a statement made by complainant's counsel at the hearings upon the fifteenth section applications to the effect that this case was in its essence based on discrimination, and that the complaint would be satisfied just as well by increasing the rates to Bristol as by corresponding reductions in the rates to Johnson City. Complainant now asks that Johnson City be accorded the present Bristol rates.

Many changes in the rate situation have taken place since our report on rehearing, more than three years ago. The rates both to Johnson City and to Bristol have been increased under general order No. 28 by the same percentage, and under the increases authorized

by us on July 29, 1920, generally by different percentages. In the light of all the evidence adduced at the further hearing, we are not convinced that the rates to Johnson City now in effect, which include the general increases mentioned, are reasonable rates for application to both Johnson City and Bristol. Even if we were prepared to find that the prevailing rates to Johnson City are not unreasonable as maximum rates applicable to that point alone, the backing up of those rates to points including Bristol, and grading them down to destinations less distant, practically all now having the benefit of rates lower than those proposed, would create an unreasonable rate situation as a whole. Unless otherwise indicated, the rates hereinafter to be discussed include the general increase of 1920.

Defendants' plan does not sufficiently recognize Bristol's proximity to the Virginia cities. It would shift to Bristol the undue prejudice which, as we have found, taints the rates to Johnson City. The following is a comparison of the class rates to Roanoke, 40 miles east of Walton and 150 miles northeast of Bristol, with the rates now in effect to Johnson City and proposed for application to Bristol under defendants' plan:

	Classes.										Classification.
	1	2	3	4	5	6	A	B	C	D	
Cincinnati to—											
Johnson City...	Cents. 158	Cents. 136.5	Cents. 108	Cents. 84.5	Cents. 72	Cents. 58	Cents. 47	Cents. 65.5	Cents. 43.5	Cents. 37	Southern. Official.
Roanoke.....	134	117.5	88.5	61	52	42					
Evansville to—											
Johnson City...	174	152	120.5	97	81.5	64.5	50	72	47	40.5	Southern. Official.
Roanoke.....	162.5	142.5	107.5	74	63	52					
St. Louis to—											
Johnson City...	223.5	193.5	152	115.5	98.5	78.5	65.5	90	67.5	52	Southern. Official.
Roanoke.....	181.5	159	120	83	70.5	58.5					
Memphis to—											
Johnson City...	174	152	120.5	97	81.5	64.5	50	69	40.5	34	Southern. Official.
Roanoke.....	142.5	126.5	97.5	69	57.5	48					
Nashville to—											
Johnson City...	149	128	103	80	67.5	53	44	62.5	40.5	34.5	Southern. Official.
Roanoke.....	129	115.5	90	64.5	54.5	45					
Kenova to—											
Johnson City...	187.5	162	129.5	95.5	83.5	63.5	63.5	62.5	60	60	Southern. Official.
Roanoke.....	118.5	103.5	78	53.5	45.5	37.5					
Pittsburgh to—											
Johnson City...	195.5	168.5	133.5	98.5	86.5	65.5	65.5	66.5	62	62	Southern. Official.
Roanoke.....	117	102	77	52.5	44	36.5					

We are not impressed with the justification offered by defendants in support of their proposal to construct rates to Johnson City and Bristol from central territory on and west of the Cleveland-Belpre line, exclusive of Ohio River crossings, on the basis of Virginia cities rates plus the arbitraries over Walton to Bristol and the Southern's local rate beyond. The Virginia cities rates, with others between points in the eastern group, have been increased 40 per cent under the general increase of 1920 in recognition of the low rate level prevailing

generally in that group, and the first-class rates to the Virginia cities from Cincinnati and Chicago are now \$1.34 and \$1.545, respectively, as compared with 95 cents and \$1.095 at the last hearing in this case. Since then the 15-cent first-class arbitrary was increased to 17.5 cents on December 31, 1919, and to 24.5 cents under the general increase of 1920. The Southern's local rate beyond Bristol, then 32.5 cents, is now 40.5 cents. Together they would produce a factor of 65 cents for an average haul to these destinations of 78.5 miles from St. Paul and 122.5 miles from Walton, applicable as a proportional on traffic transported several hundred miles before reaching the basing points.

The grouping of the points, taking the Buffalo-Pittsburgh territory rates, comprising mostly north-and-south lines, seems ill-designed for the southbound movement to the destinations under consideration. This territory is comparatively narrow north of Pittsburgh and widens considerably south thereof. Its length in the direction of the movement is nearly as great as the hauls to Johnson City and Bristol from the nearest point in that territory.

In *Rates to and from Nashville*, 61 I. C. C., 308, hereinafter termed the *Nashville Case*, we had under consideration class rates between points in the southeast. We prescribed, among others, the following maximum first-class rates:

	Distance.	First-class rate.
	Miles.	Cents.
Mobile, Ala., to Nashville, Tenn.....	473	160
Atlanta, Ga., to Cincinnati, Ohio.....	474	160
Birmingham, Ala., to Henderson, Ky.....	354	145
Atlanta, Ga., to Memphis, Tenn.....	418	150

In that case we also approved respondents' proposed first-class rate of \$1.78 from Virginia cities to Nashville, an average distance from Norfolk, Richmond, Roanoke, and Lynchburg, Va., of 669 miles.

In *Rates to, from, and between Points South of Ohio River*, 64 I. C. C., 107, we prescribed a maximum first-class rate of \$2 between the Virginia cities and Memphis, an average distance of 828 miles from the representative Virginia cities named above, and required its use as a key rate upon which to construct rates to and from other points in Mississippi Valley territory.

RELATIONSHIP OF CLASSES.

The table below gives the percentage relationship of the lower classes to first class in the rates proposed from representative points and illustrates the lack of consistency in that relationship:

To Johnson City and Bristol, from—	Classes.									
	1	2	3	4	5	6	A	B	C	D
Cincinnati.....	100	86	68	53	46	37	30	41	28	23
Evansville.....	100	87	69	56	47	37	29	41	27	23
St. Louis.....	100	87	68	52	44	35	29	40	30	23
Memphis.....	100	87	69	56	47	37	29	40	23	20
Nashville.....	100	86	69	54	45	36	30	42	27	23
Kenova.....	100	85	66	51	43	35	29	42	27	22
Pittsburgh.....	100	86	68	50	44	33	33	42	32	32
Averages.....	100	86	68	53	45	36	30	41	28	24

In the *Nashville Case* respondents urged upon us for application in the southeast a relationship of classes upon the so-called southern standard scale, but we prescribed the following:

Classes	1	2	3	4	5	6	A	B	C	D
Percentages	100	86	76	64	52	43	29	35	27	24

and that scale was also prescribed in *Rates to, from, and between Points South of Ohio River, supra*, for revising rates in accordance with our findings therein between Mississippi Valley territory, on the one hand, and, on the other, eastern and Virginia cities and Carolina territory. Under a given first-class rate the latter scale would produce a higher average rate than from the foregoing table.

The table below compares the class rates now in effect to Johnson City and Bristol with those which are to be established under our findings herein, using first, fourth, and sixth classes as illustrative, together with the averages of the short-line distances from the respective points of origin to the two destinations:

From—	To—	Average distance.	Classes.				Classification.
			1	4	6		
Cincinnati, Ohio.....	Johnson City.....	363.5	Miles. 158	Cents. 84.5	Cents. 58		Southern.
	Bristol.....		153.5	70.5	49		Official.
	Both under findings.....		142	91	61		Southern.
Evansville, Ind.....	Johnson City.....	505.5	174	97	64.5		Do.
	Bristol.....		181.5	84	59		Official.
	Both under findings.....		162	103.5	69.5		Southern.
St. Louis, Mo.....	Johnson City.....	633	223.5	115.5	78.5		Do.
	Bristol.....		200	93	65		Official.
	Both under findings.....		185	118.5	79.5		Southern.
Memphis, Tenn.....	Johnson City.....	539.5	174	97	64.5		Do.
	Bristol.....		177.5	97.5	62		Do.
	Both under findings.....		162	103.5	69.5		Do.
Nashville, Tenn.....	Johnson City.....	335	149	80	53		Do.
	Bristol.....		152.5	80.5	50.5		Do.
	Both under findings.....		137	87.5	59		Do.
Kenova, W. Va.....	Johnson City.....	252	187.5	95.5	63.5		Do.
	Bristol.....		122	56.5	39		Official.
	Both under findings.....		120	77	51.5		Southern.
Pittsburgh, Pa.....	Johnson City.....	542.5	195.5	98.5	65.5		Do.
	Bristol.....		172	77.5	52.5		Official.
	Both under findings.....		160	102.5	69		Southern.

Compared with the rates now in effect the first-class rates under our findings represent material reductions to Johnson City, and smaller reductions to Bristol, but on the lower classes substantial increases will result in many instances. Using the rates from Cincinnati as typical, those on the numbered classes now in effect to Johnson City average 102.83 cents and to Bristol 92.42 cents. Under our findings the average rate to both destinations is 99.67 cents.

FINDINGS.

Upon consideration of the entire record in this case we reaffirm our original findings that under the existing rate adjustment there is undue prejudice to Johnson City and undue preference of Bristol.

We further find that defendants' proposed plan for equalizing the rates to Johnson City and Bristol, and for revising rates to intermediate and related destinations, has not been justified; and that defendants should establish class rates applicable to interstate traffic constructed in accordance with the bases shown below, which we find will remove the undue prejudice to Johnson City and undue preference of Bristol found to exist, and will be just and reasonable maximum rates:

Class Rates: To both Johnson City and Bristol the class rates, governed by the southern classification, shall be upon scales beginning with the following rates on first class, which include the increases authorized by us on July 29, 1920:

To Johnson City and Bristol from—	Average distance.	First-class rate.
	<i>Miles.</i>	
Cincinnati, Ohio.....	363.5	\$1.42
Evansville, Ind.....	505.5	1.62
St. Louis, Mo.....	633	1.85
Memphis, Tenn.....	539.5	1.62
Nashville, Tenn.....	335	1.37
Kenova, W. Va.....	252	1.20
Pittsburgh, Pa.....	542.5	1.60
Walton, Va.....	122.5	1.30
St. Paul, Va.....	78.5	1.30

¹ If a lower rate may be obtained on any article by the use of the rate to Roanoke, Va., plus a differential on scale of 50 cents first class and the lower classes graded down in accordance with the percentages given below, governed by the southern classification, such lower rate shall be applied.

² Proportional.

Rates from all other points of origin under consideration shall be constructed with relation to the foregoing. But this finding must not be construed as approving the present grouping of points taking Buffalo-Pittsburgh territory rates.

The lower classes of the rates so revised shall be constructed in conformity with the following percentages of first class:

Classes.....	1	2	3	4	5	6	A	B	C	D
Percentages	100	86	76	64	52	43	29	35	27	24

64 I. C. O

In computing and applying the rates prescribed herein fractions of less than 0.25 cent shall be omitted; fractions of 0.25 cent or greater but less than 0.75 cent shall be stated as 0.5 cent; and fractions of 0.75 cent or greater shall be increased to the next whole cent.

Commodity rates: With respect to the territories and points of origin under consideration from which joint or individual commodity rates are published to Johnson City and/or Bristol:

The record affords no satisfactory basis for determining lawful commodity rates. Detailed treatment of such rates is practically confined to those from Cincinnati, and to the proportional rates from St. Paul and Walton. We think that commodity rates should be established in harmony with the revision of class rates herein prescribed, and that from each point of origin they should be substantially the average of the commodity rates now in effect from that point to Johnson City and Bristol, respectively. In cases where commodity rates are not maintained both to Johnson City and to Bristol, the commodity rate to each should be substantially the average of the commodity rate now in effect to the one destination and the class rate to the other as revised in accordance with our foregoing findings. In no instance should any commodity rate exceed such revised class rate. Defendants will be expected to promptly revise their commodity rates accordingly, and to file tariffs with us containing the rates so revised within 120 days after the service of this report. If this is not done, the matter may be brought to our attention for appropriate action. No order will be entered in respect of commodity rates at this time.

Destinations other than Johnson City and Bristol: Class and commodity rates to destinations described in defendants' plan, other than Johnson City and Bristol, shall be revised in accordance with the bases prescribed for Johnson City and Bristol, using distance as a guide. To such points intermediate to Johnson City and to Bristol the proportional rates prescribed from St. Paul and Walton to Johnson City and Bristol shall be graded down with the lessening distance to destination.

This prescription of the general bases for rates to Johnson City, Bristol, and other destinations embraced in defendants' plan, carries with it no approval of any specific rate which may be published in purported compliance therewith.

We further find that defendants are entitled to relief from the long-and-short-haul provision of the fourth section of the interstate commerce act on traffic to Bristol and Johnson City, and to destinations on the Southern between those points, moving over the Norfolk & Western via Walton, subject to the condition that this relief

shall not include intermediate points as to which the haul in connection with the Norfolk & Western is less than the haul between the competitive points over the direct route.

Appropriate orders will be entered.

COMMISSIONER POTTER did not participate in the disposition of this case.



No. 12662.

FARMERS GRAIN COMPANY

v.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY
COMPANY.

Submitted December 2, 1921. Decided December 20, 1921.

Defendant found not to have unjustly discriminated against complainant in the distribution of empty cars for grain loading at Prairie Home, Nebr., between August 2 and September 21, 1920. Complaint dismissed.

F. L. Bollen for complainant.

Guy C. Chambers and *A. B. Enoch* for defendant.

REPORT OF THE COMMISSION.

DIVISION 5, COMMISSIONERS AITCHISON, POTTER, AND LEWIS.

BY DIVISION 5:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation owning and operating a grain elevator at Prairie Home, Nebr., alleges that defendant unjustly discriminated against it and unduly preferred its competitor, the Prairie Home Cooperative Association, in the distribution of empty cars available for grain loading at Prairie Home, during August and September, 1920. We are asked to award damages and to prescribe for the future just and reasonable rules and regulations governing the distribution of empty cars for grain loading.

The facts were stipulated and are as follows: Prairie Home is a local station on defendant's line, 47 miles west of Omaha, Nebr. The capacity of complainant's elevator is approximately 5,000 bushels, while that of its competitor is approximately 14,000 bushels.

During the period in question, August 2, 1920, to September 21, 1920, inclusive, complainant constantly had in its elevator, ready for shipment, approximately 5,000 bushels of grain and an additional 5,000 bushels of grain in the country adjacent to Prairie Home. Its competitor had constantly in its elevator, ready for shipment, during this period, approximately 10,000 bushels of grain. For two years prior to August 1, 1920, complainant shipped as many cars of grain as did its competitor. Complainant therefore requested that defendant supply it with one-half and more of all the grain cars which might be available for distribution at Prairie Home between August 2 and September 21, 1920, but defendant, out of a total of 12 cars available, furnished the complainant with 4 cars and its competitor with 8 cars.

The defendant's rules governing the distribution of cars for grain loading in force during this period provided, in substance, that the quantity of grain on hand tendered for rail shipment and conveniently located for prompt loading should be used as a basis for apportioning the available supply of empty cars. This rule grew out of, or was based upon, our decisions in *Farmers' Elevator Co. v. C., M. & St. P. Ry. Co.*, 47 I. C. C., 475, and *Tanner & Co. v. C., B. & Q. R. R. Co.*, 53 I. C. C., 401, and is not attacked herein.

Defendant distributed the available empty cars between the two competing shippers, based on the amount of grain each had in its elevator. Complainant contends that because defendant did not take into consideration the 5,000 bushels of grain in the country adjacent to Prairie Home in distributing the available empty cars, it has been unjustly discriminated against. We do not sustain this contention.

It appears from the exhibits filed of record that in July, 1920, the Nebraska State Railway Commission, by letter addressed to the defendant's agent at Prairie Home, held that the actual amount of grain on hand in the elevator and ready for shipment is the sole basis for distribution of grain cars as between elevators. This ruling was based upon our finding in the *Farmers' Elevator Case*, *supra*.

We find that defendant did not unjustly discriminate against complainant in the distribution of empty cars for grain loading from August 2 to September 21, 1920, inclusive. The complaint will be dismissed.

No. 11961.

WAUSAU SOUTHERN LUMBER COMPANY

v.

GULF & SHIP ISLAND RAILROAD COMPANY ET AL.

Submitted July 1, 1921. Decided December 15, 1921.

Defendants' practices in the distribution of empty cars among lumber shippers at Laurel, Miss., since September, 1919, not found unduly prejudicial to, nor unjustly discriminatory against, complainant. Complaint dismissed.

William A. Wimbish and *Challen B. Ellis* for complainant.

Charles D. Drayton, S. S. Ashbaugh, Claudian B. Northrop, and *C. J. Rixey* for defendants.

Charles Green for Eastman, Gardiner & Company; and *S. M. Jones* for Gilchrist-Fordney Company, interveners.

REPORT OF THE COMMISSION.

DIVISION 5, COMMISSIONERS McCHORD, AITCHISON, POTTER, AND ESCH.
BY DIVISION 5:

Exceptions were filed by complainant to the report proposed by the examiner, and the parties were heard in oral argument.

Complainant, a corporation engaged in the manufacture of lumber at Laurel, Miss., alleges that defendants have, since September, 1919, unjustly discriminated against it in the distribution of empty cars for the transportation of its products, in favor of competing lumber manufacturers at Laurel in violation of the interstate commerce act. It asks us to prescribe for the future a just, reasonable, and equitable basis for the distribution of cars among manufacturers and shippers of lumber at that point, and to award damages. Eastman, Gardiner & Company and Gilchrist-Fordney Company, lumber manufacturers at Laurel, intervened in opposition to the complaint.

Since October, 1912, complainant has observed a policy of operating its mill on what it terms a 20-hour day, except when interrupted by labor or market conditions. The normal capacity of this plant is rated on this basis. Other mills in this region generally operate 10 hours a day, on which basis the capacity of lumber mills are rated by lumbermen and mill-machinery manufacturers. Complainant originally contemplated operating two mills, but found that by operating one 20 hours a day the overhead expense could be materially reduced. It accordingly installed additional logging, dry-kiln, planing-mill, storage, and other facilities to take care of the

increased output. During periods of subnormal prices, overproduction, and consequent heavy accumulation of stock, the practice has been to discontinue the night shift.

The lumber plants at Laurel secure their car supply from the Southern, Gulf, Mobile & Northern, and Gulf & Ship Island railroads, the defendants herein.

During periods of car shortage, which began in the fall of 1916, it has been the defendants' policy to apportion available empty cars among lumber shippers at Laurel in the proportion that cars were loaded by each during periods of adequate car supply, subject to changed plant capacity or loading facilities. Cars were not pooled, but the agents of the carriers at Laurel exchanged information each day as to the number of cars supplied to each mill. Under this practice local mills on the line of any of the defendants herein were accorded the same relative car supply as the mills at Laurel, even though the latter were served by more than one carrier. The interveners do not object to this plan of distribution.

Complainant contends that the rule of distribution should be based upon the ability of the shippers to promptly load, as determined by production and accumulated stock on hand. Its loading tracks hold from 35 to 40 cars, and it claims that, with an ample supply of lumber and labor it can load from 15 to 20 cars per day. The maximum number of cars shipped during any month, so far as the record shows, was 400, and this was in the year 1914.

As a result of complaints filed by shippers at Laurel, during the summer of 1920, alleging discrimination in car supply for shipments of lumber at that point, an inspector of the commission on car service of the American Railway Association made an investigation. His report, which was based jointly on production capacity of the various mills, during the period January 1, 1920, to June 30, 1920, and the amount of accumulated stock on hand, suggested ratings for the complainant and Eastman, Gardiner & Company, based on ability to load, 15 cars per day, Gilchrist-Fordney Company 8 cars per day, and the Marathon Lumber Company 8.5 cars per day. Complainant relies largely upon the report of this inspector in support of its position that it received less than its proportionate share of cars. The report shows, among other things, that during the month of June, 1920, based on their ability to load, the requirements of complainant, and Eastman, Gardiner & Company, were 390 cars each, Gilchrist-Fordney Company 208 cars, and the Marathon Lumber Company 221 cars. During this month these lumber companies were furnished with the following percentages of the number of cars required, as above indicated: complainant 32.6, Eastman, Gardiner & Company 41.5, Gilchrist-Fordney Company 44.2, and the Marathon Lumber Company 35.7. The report shows similar information for the period

from July 1 to July 20, with like results. Complainant, however, did not operate its plant 20 hours per day after July 1, so that even though it can be assumed that the inspector's proposed basis was correct for a period of 20-hours production, it would still be erroneous subsequent thereto. However, the recommendation of the inspector was not adopted, and we are not convinced that the ratings which he proposed were correctly determined. The best evidence of whether or not the complainant was discriminated against in the matter of car supply would be afforded by testimony showing the number of cars ordered by the respective lumber companies at Laurel, including the complainant, during the period in question, and the number of cars furnished therein by the carriers. On this important matter the record is barren. Later, by conference between the carriers and shippers, an effort was made to reach a mutually satisfactory understanding with respect to the distribution of cars, but this effort was not successful, and the carriers continued to distribute cars on the basis of past performance.

Defendants take the position that if cars were distributed on the basis contended for by complainant, shippers might gain advantage through accumulating stocks; not shipping when cars were plentiful; and later, by offering large accumulations during car-shortage periods, obtain virtually all the available equipment, thus working discrimination against the mills having small storage capacity. Further, that they have no practicable way of ascertaining with any degree of accuracy the quantity of accumulated stocks on hand at particular mills, whereas, under the present method of distribution, they have a check on the ratings in the form of their records of past performance. They contend that the correct rule is one based on such past performance; that is, what the shippers actually loaded and shipped during periods of normal car supply.

The following statistics compiled from exhibits of record permit a comparison of the operation of the four principal lumber mills at Laurel during designated periods from 1913 to and including 1920:

	Eastman, Gardiner & Company	Wadsau Southern Lumber Company.	Gilchrist- Fordney Company.	Marathon Lumber Company.
Capacity, 10-hour day	250,000	170,000	140,000	140,000
Capacity, 20-hour day .....	.....	245,000	.....	.....
Average annual output, 1913-1919 inclusive	64,409,000	55,604,000	.....	.....
Average annual output, 1917-1918 inclusive .....	.....	.....	37,946,000	(1)
Output for year 1920	60,230,000	52,930,000	31,708,000	(1)
Shipments, year from September 1, 1919	58,000,000	49,000,000	28,000,000	.....
Ratio of shipments to average output.....Per cent	90	88	74	.....
Average number of cars loaded per day, during 8 months' full supply, 1917, 1918, 1919, 1920	17.8	13.2	9.5	9.5
Average number of cars loaded per day, during 33 months' car shortage, same period	18.8	13.8	8.3	8.9

¹ Not shown.

The above tabulation shows that complainant's shipments equaled 88 per cent of its average annual output on the 20-hour-day basis against 90 per cent of the average annual output of Eastman, Gardiner & Company on a 10-hour daily shift. Hence complainant suffered very little in the comparison. If all mills had been rated solely on a 10-hour-day capacity, complainant would have had an advantage, for, with its mill 68 per cent of the capacity of the Eastman, Gardiner & Company mill, its loading has been at least 74 per cent of the latter's loading during periods of adequate car supply and 73.5 per cent during periods of car shortage. Conflicting figures submitted by complainant tend to show an increase in these loading percentages. So far as actual output is concerned, it is not clear in what respect a policy of a 20-hour day with reductions in case of overproduction differs from a policy of a 10-hour basis with overtime operation during periods of abnormal demands.

In *Farmers' Elevator Co. v. C., M. & St. P. Ry. Co.*, 47 I. C. C., 475, we considered a rule governing the distribution of cars for grain loading during periods of car shortage, which provided in substance that cars should be furnished based upon grain being actually on hand and conveniently located for prompt loading and said:

The rule is framed with the general view of distributing cars during periods of car shortage in the relative proportions in which different shippers tender grain for shipment, such grain being actually on hand and conveniently located for prompt loading. This, we believe, is fair and should be followed during the entire period of car shortage. With all of their elevators filled, shippers would probably offer all of their grain for shipment in order to secure the greatest possible share of available equipment. In that event, shippers with the largest storage capacity will be given the largest proportion of available cars provided they offer all of their grain for shipment, which, however, will not constitute undue preference. * * *

It is entirely fair to distribute the largest share of the available cars to the dealer with the largest amount of grain on hand ready for shipment, even though he might not during normal periods have controlled the larger volume of grain shipped from the point at which he is located, for his elevator must be regarded as a part of the facilities necessary in the transportation of grain, and in so far as he has provided himself with superior facilities he is entitled to whatever advantage he may secure thereby.

We directed the defendant therein to establish a rule to be followed during periods of car shortage in distributing cars to grain shippers located upon its line in the relative proportion in which different shippers tender grain for shipment, such grain being actually on hand and conveniently located for prompt loading.

In *Tanner & Co. v. C., B. & Q. R. R. Co.*, 53 I. C. C., 401, we cited with approval our findings in *Farmers Elevator Co. v. C., M. & St. P. Ry. Co.*, *supra*, but made no order because the Director General was not a party defendant.

We shall not undertake to determine here whether a different rule should be applied to lumber from that applicable to grain. It is the duty of a carrier to furnish transportation upon reasonable request therefor, and not to unjustly discriminate as between shippers in the distribution of cars. This duty, however, only applies when the commodity tendered for shipment is actually on hand and conveniently located for prompt loading. It is entirely conceivable that either current output or accumulated stock might not be tendered for shipment at all. Further, it is well known, and the record shows, that not all lumber can be shipped green. A large portion must be either air dried or kiln dried before shipping.

Any rule of car distribution established at Laurel must of necessity be extended to include other lumber shippers located on the lines of the defendant carriers in the same general district. If this be not done, the relationship as between shippers at Laurel and shippers at other points will be disarranged. It is just as necessary to maintain a proper relationship for car distribution between shipping points, districts, and railroad divisions as it is to maintain a proper relationship between individual shippers. The witnesses appearing in this case were not competent to testify as to conditions or practices at other shipping points than Laurel. Nor does the record contain sufficient information to warrant us in prescribing a general or inelastic rule for car distribution to lumber shippers. In fact, no necessity appears for such action.

Some complaint is made regarding alleged irregularities in the delivery of cars supplied, aside from the question of their quantity, but the evidence does not support a finding in this respect.

We find that the defendants' rules and practices of distributing cars to lumber shippers at Laurel, Miss., during the period covered by the complaint are not shown to have been unduly prejudicial or unjustly discriminatory to complainant. This finding, however, should not be construed as an approval of the past-performance theory of distributing cars as applied to the lumber industry. The complaint will be dismissed.

No. 10906.

CAMBRIA STEEL COMPANY

v.

DIRECTOR GENERAL, PENNSYLVANIA RAILROAD COMPANY, ET AL.

Submitted October 18, 1920. Decided December 15, 1921.

Defendants' denial to complainant of an allowance for spotting cars within its plant at Johnstown, Pa., equal to the cost of such service to complainant not shown to have subjected complainant to the payment of unreasonable rates, or to undue preference, or to damage caused thereby. Complaint dismissed.

Frederic L. Ballard for complainant.

Henry Wolf Bikelé for defendants.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND AITCHISON.

AITCHISON, *Commissioner*:

The issues here presented were made the subject of a report proposed by the examiner, to which exceptions were filed by complainant. The case has been orally argued.

Complainant is engaged in the manufacture of iron and steel at Johnstown, Pa., on a large scale. It owns and operates an extensive system of standard-gauge tracks extending throughout its plant and connecting with interchange tracks of defendants located near the entrances to the plant. By agreements with defendants it switches cars between the interchange tracks and points within the plant. For this service it receives from defendants the cost of service, subject to a maximum allowance of \$2.19 per car. It alleges that the actual cost to it of rendering the service, computed in accordance with the terms of the agreement, has been in excess of the maximum allowance; that at certain competing plants defendants, or connecting common carriers, render the entire spotting and switching service "to and from the usual points of receipt and delivery within the plant without charge or expense to the shipper or receiver in addition to the established locality rates"; that at other plants of complainant's competitors defendants "make terminal allowances out of the locality rate" based on

the cost of the service; and that by reason of the facts alleged the complainant has been subjected to rates, charges, and regulations which were and are unreasonable and unduly prejudicial in violation of sections 1 and 3 of the act to regulate commerce, and unreasonable in violation of section 10 of the federal control act. The complainant seeks an award of reparation in the sum of \$178,181.52, and an order requiring the establishment and maintenance of reasonable charges and regulations for the future.

Complainant's plant at Johnstown covers an area of about 546 acres. It extends along the Conemaugh River for a distance of nearly 8 miles, and includes four principal subdivisions known as the Franklin works, the Cambria works, the Gautier works, and the Rod and Wire works. The first two subdivisions contain the furnaces, and are devoted principally to the manufacture of iron and steel; the other two are largely engaged in the manufacture of finished products. During the year 1918 a total of 251,785 cars, loaded and empty, were interchanged at the plant. The outbound tonnage in that year was 1,452,038 net tons, and the freight charges on inbound shipments, paid by complainant, were \$6,284,223.17.

In and about the different works and connecting them with each other are 85.88 miles of standard-gauge tracks and 14 miles of narrow-gauge tracks. About 35 miles of the standard-gauge tracks are characterized as open or running tracks and the rest as yard or siding tracks. Excluding the complainant's own classification yards and spurs from the main line to operating units, the length of purely running track is approximately 19 miles. The narrow-gauge tracks are located within the Franklin, Cambria, and Gautier works, and are used exclusively in moving materials from one part of the works to another. They are on the same grade as the standard-gauge tracks and cross them at several points. Complainant's standard-gauge equipment consists of 43 locomotives and 1,194 cars. The cars are used exclusively within the plant with exception of four tank cars which have been employed to some extent in a road-haul movement. The narrow-gauge equipment includes 30 locomotives and about 150 cars. Complainant maintains a complete operating organization headed by a superintendent, and including foremen of motive power, maintenance of way supervisors, chief dispatcher, and yard masters.

There are four interchange yards, three of which are used in connection with the Pennsylvania Railroad and one in connection with the Baltimore & Ohio Railroad. The service performed by complainant for which the allowance is made consists in moving the loaded and empty cars between the interchange tracks and the points of loading and unloading within the plant. There are about 60 un-

loading and 40 loading points. The length of the average weighted movement was estimated by the complainant to be 1.8 miles. In addition to the interchange service complainant performs an extensive intraplant service including movements within the several works and between them. All of the interworks transportation is over the standard-gauge tracks. The intraworks transportation is performed partly by the standard-gauge and partly by the narrow-gauge equipment. Of the total work performed by complainant on its standard-gauge tracks only about one-fourth is interchange, and the rest is intraworks and interworks service. As performed by complainant the interworks movements are, to some extent, combined with the interchange movements.

At the conclusion of the hearing defendants made the following proposal:

The respondents [defendants] in this proceeding are willing to perform the spotting service from the interchange track to points inside the plant of the Cambria Steel Company, and will, after the cars have been loaded or unloaded (as the case may be), return them to the interchange track; provided, the Cambria Steel Company is willing that this be done under the exclusive direction and control of the respondents, and without any interference on its part.

If the Cambria Steel Company is unwilling to agree to permit the respondents to perform the service suggested, without interference on its part, the respondents are still willing to perform it, provided the Cambria Steel Company is willing that this be done under the exclusive direction and control of the respondents, and is completed when the respondents encounter interference of any kind, resulting from operations of the Steel Company.

Defendants contend that the above offer covers all that can be legally required of them in the way of terminal services under the line-haul rates. Complainant points out that it would be impracticable for defendants to perform the interchange service while complainant continues to perform its plant service, without some co-ordination of the two under one directing head.

Prior to 1914 the only allowances received by complainant were the so-called furnace allowances on ore, coke, and limestone. These allowances, which appear to have been established in the "early eighties," were made by the carriers to all the pig-iron furnaces in the Pittsburgh district. They had no relation to any services rendered by the furnace companies, but were in the nature of an equalization of rates. These furnace allowances were canceled in 1914 following our report in the original *Industrial Railways Case*, 29 I. C. C., 212. In 1915 complainant applied to defendant railroads for a terminal allowance. The matter was considered by a committee appointed by the carriers to pass upon applications of that character, and, effective June 1, 1917, the present allowance was estab-

lished. The tariffs covering this allowance provide that for the terminal service performed by complainant it will be allowed out of the Johnstown rate the actual cost of the service, but not exceeding \$2.19 per car. The allowance does not cover the movement of ex-lake iron ore.

To ascertain the cost of performing the interchange work for which the allowance is paid a record is kept by engine-hours of all engine service performed by complainant. About one-half of this is in purely plant service, and the other half is general service in which plant and interchange movements are intermingled. Labor costs incurred in the purely plant service are first eliminated. General costs, which are common to both plant and general service, are apportioned on the basis of engine-hours worked in each service. This gives the total cost of the general service, which is again divided into interchange and plant service on the basis of engine-hours computed from the number of cars of each kind handled. The total cost of the interchange service, thus obtained, is divided by the number of loaded cars interchanged, and the result is stated as the cost per car. Complainant introduced evidence tending to show that the cost to it of performing the interchange service, computed in the manner outlined, exceeded the maximum allowance of \$2.19 per car in 23 out of the 25 months from June, 1917, to and including June, 1919. For the period from November, 1918, to June, 1919, the cost is shown as more than \$4 per car.

Defendants offered evidence to show that the cost to them of performing the interchange service would not exceed the maximum allowance if all interference by complainant with their operations were eliminated; but they do not seriously question that the cost figures submitted by complainant show with reasonable accuracy the cost of performing the interchange service in coordination with the plant service. It appears to be conceded that the interchange service can be performed more economically by complainant than it could be by defendants with complainant continuing its plant service as at present.

This complaint is brought upon the theory that the transportation service covered by the line-haul rates to and from Johnstown is not completed at the interchange tracks, but includes the entire movement between those tracks and the various points of loading and unloading within the plant; and that defendants have employed complainant to perform that part of the movement which is beyond the interchange tracks. That a carrier may thus by contract employ the owner of property transported to perform a portion of the transportation service is recognized by section 15 of the interstate commerce act. The effect of such a contract with the carrier

is to determine, as between the parties thereto, the amount to be paid for the services rendered. Our duty, under section 15, is to take care lest the amount paid become so large as to amount, in effect, to an unlawful concession to a shipper from the transportation rate. We may, under that section, determine what is a reasonable charge as the maximum to be paid by the carrier, and fix the same by appropriate order. The Supreme Court has said, in *Atchison Railway Co. v. United States*, 232 U. S., 199, that whatever transportation service or facility the law requires the carriers to supply they have the right to furnish. If the shipper becomes dissatisfied with his bargain he may cease to render the service, and defendants must then provide for service to the extent of their legal obligation. We are without power to require carriers to pay allowances to shippers for spotting. *Buckeye Steel Castings Co. v. H. V. Ry. Co.*, 58 I. C. C., 500. *A fortiori*, we can not compel a carrier to increase an allowance of this kind on the sole ground that it is inadequate to cover the cost to the shipper whom it has employed to perform the particular service.

The complaint includes an allegation that by reason of the inadequacy of the allowance complainant has been subjected to the payment of unreasonable and excessive rates to and from Johnstown, in violation of section 1 of the act. Our decisions in *National Malleable Castings Co. v. P. & L. E. R. R. Co.*, 51 I. C. C., 537, and *Sharon Steel Hoop Co. v. P. Co.*, 51 I. C. C., 545, are cited. These cases are clearly distinguishable from the instant case in this particular, that there the allowance out of the locality rate had been entirely discontinued for a time, thus, in effect, increasing the line-haul rate. In this case the allowance agreed upon has been regularly paid by defendants and accepted by complainant. Complainant is now receiving the same service in return for the Johnstown rate as when the allowance was first established. If the allowance paid it for performing a part of the total service covered by the line-haul rates, viz, the terminal services, is now less than the out-of-pocket cost, that fact no more demonstrates the unreasonableness of the Johnstown rates than if defendant carriers had employed some third party to do the work at a price which he found to be unremunerative.

The practices of defendants must not transgress either sections 1 or 3 of the act. The charge of undue prejudice is based on the allegation that at the plants of certain of complainant's competitors, located in Pittsburgh and Youngstown districts and at other points, the "locality" rate covers the switching and spotting service on inbound and outbound shipments to and from the points of receipt and delivery within the plants, this service being performed either

directly by defendants or by common carrier or noncommon-carrier industrial railways, which are reimbursed through divisions, absorptions, or allowances paid by defendants out of the locality rate. Defendants pay to the Union Railroad, a common-carrier industrial railroad which serves various plants of the Carnegie Steel Company in the Pittsburgh district, 10 cents per ton on traffic of that industry. The same amount is paid to the South Buffalo Railroad, a common-carrier industrial line operating at the plant of the Lackawanna Steel Company at Lackawanna, N. Y. The magnitude of the services covered by these payments does not clearly appear of record. Nor does it appear whether such payments exceed, are equal to, or are less than the cost incurred by these industrial common carriers in performing the service shown. In any event a division out of a joint rate or an absorption of the charges of a common-carrier industrial line is essentially different from the allowance contemplated by section 15 of the act. It is not claimed that the proprietary industries, complainant's competitors, are receiving from defendants, through the common-carrier industrial railways, the equivalent of any greater terminal service than they are entitled to receive in return for the transportation rates paid by them to defendants.

Allowances are paid to noncommon-carrier industrial railways operated by complainant's competitors at various points. These allowances range in amount from 66 cents per car to 4.33 cents per ton. In a majority of instances, they are less than that received by complainant. Exhibits purporting to set forth all cases of compensation paid for spotting cars in trunk line and central freight association territories on both the common-carrier basis and the plant-facility basis indicate that 14 divisions or absorptions are granted to industrial common carriers, and 63 allowances to plant-facility railways. Practically all the allowances on the plant-facility basis were fixed at the same time and by the methods applied in determining the compensation to be paid to complainant. At 56 iron and steel industries located on the Pennsylvania Railroad, and 35 located on the Baltimore & Ohio Railroad, it appears that the terminal switching is performed by the industry without any allowance whatever.

At certain competing steel and iron mills at Youngstown and Warren, Ohio, including the Republic Iron & Steel Company, Youngstown Sheet & Tube Company, Brier Hill Steel Company, and Trumbull Steel Company, these defendants and other carriers have for many years delivered inbound shipments at the usual points of unloading and removed outbound shipments from the usual points of loading within the plant, without any charge in addition to the line-haul rates. This service was and is performed with pooled

power; that is, a single carrier does all of the switching and spotting at one plant for the account of all the carriers serving such plant, and all movements within the plant are performed under the direction of the plant superintendent in order that they may be coordinated with the purely plant service performed with plant power. Whether the compensation paid by the carriers for services performed by these shippers is relatively more favorable than that before us is not clear; hence the allegation of undue prejudice is not sustained.

While complainant is in active competition with the plants at Youngstown and Warren in the sale of its products, it does not appear that during the period covered by this complaint the prices of the products were fixed by such competitors, nor that complainant would have made any more money if such competitors had not enjoyed the spotting service accorded them. It can not be said upon this record that complainant was damaged by reason thereof.

We therefore conclude, on the record before us, that the complainant is not shown to have been subjected to the payment of unreasonable rates as alleged. Complainant has not shown that it has been subjected to undue prejudice, or has suffered damage thereby. No violation of the federal control act has been established as alleged. The complaint will be dismissed, and an order to that end will be entered.

No. 12111.

PIONEER POLE & SHAFT COMPANY

v.

DIRECTOR GENERAL, AS AGENT, ILLINOIS CENTRAL
RAILROAD COMPANY, ET AL.

Submitted September 12, 1921. Decided December 19, 1921.

Rates on hickory flitches and planks from points on the lines of defendants, except the Batesville Southwestern, in Illinois, Kentucky, Tennessee, Mississippi, Alabama, and Louisiana to Memphis, Tenn., and Cairo, Ill., found not to have been or to be unreasonable or unduly prejudicial. Joint rate on billets, flitches, and other rough material from Crowder, Miss., and other points on the Batesville Southwestern to Cairo, found unreasonable. Reparation awarded.

J. H. Day, A. F. Broomhall, and Broomhall & Broomhall for complainant.

A. P. Humburg for Illinois Central and Yazoo & Mississippi Valley railroad companies.

W. N. McGehee for Director General, as Agent, and Mobile & Ohio Railroad Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

EASTMAN, Commissioner:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation with its principal place of business at Piqua, Ohio, is engaged in shipping hickory logs, bolts, hoop poles, flitches, planks, billets, and other rough material from Ohio River points in Illinois, and from points in Kentucky, Tennessee, Mississippi, Alabama, and Louisiana to its plants at Memphis, Tenn., and Cairo, Ill., for manufacture into spokes, felloes, poles, shafts, and similar vehicle material. These products move outbound on lumber rates. For many years the Illinois Central and Yazoo & Mississippi Valley have published so-called rough-material rates, lower than the local lumber rates, on logs, bolts, hoop poles, and certain kinds of billets, from points on their lines to Memphis and Cairo, the application of which was and is conditioned upon the outbound movement of the finished product over the lines of the inbound carrier within a prescribed period. On November 1 and December 25, 1920, respectively, the Memphis and Cairo tariffs of these carriers were amended so as to include flitches among the articles taking the rough-material rates. The Mobile & Ohio maintains similar rates

from points on its line to Memphis and Cairo, which are applicable also on blocks, sawed heading, and rough staves, but not on flitches. These carriers have never applied the rough-material rates on planks.

Complainant alleges that the rates on hickory planks and flitches, in carloads, from points in the states and on the lines of the carriers named to Memphis and Cairo were and are unreasonable and unduly prejudicial to the extent that they exceeded and exceed the rates contemporaneously applicable on billets, and that in certain instances the rates assailed were and are in violation of section 4 of the interstate commerce act. Reparation is sought on all shipments which moved since July 15, 1917. Rates are stated herein in cents per 100 pounds.

Flitches are slabs as cut from the log and have the bark on one or both edges; planks are made from flitches by cutting off the bark, and billets are dimension pieces of lumber or timber used in the manufacture of spokes, felloes, shafts, and other products, the dimensions varying with the uses to which they are to be put. In *Rates on Lumber and Lumber Products*, 52 I. C. C., 598, we found that flitches, planks, and billets should take the lumber rates as maxima. Complainant concedes the propriety of that basis and does not attack the lumber rates. It contends, however, that since defendants apply the rough-material rates on billets, and in some cases on flitches, they should apply the same rates in all cases on flitches and on planks as well.

Complainant uses flitches, planks, and billets in the manufacture of the same articles, and there is no substantial difference in their value or transportation characteristics. The Missouri Pacific publishes rates on rough material, including flitches and planks, from points on its lines in Arkansas, Louisiana, and other states to Memphis and Cairo. The St. Louis-San Francisco maintains like rates on flitches and other rough material, not including planks, from points on its lines east of the Mississippi River to Memphis. Complainant argues that as billets may be cut from planks, they are in a more advanced state of manufacture and therefore planks should not take higher rates. It is shown, however, that billets may be cut from timber in other forms less finished than planks,

Defendants state that the rough-material rates were published many years ago to encourage development of the country along their lines, and were intended to cover cost only; that these rates have been increased since their establishment only by the general increases authorized by the Director General of Railroads and by us; and that the normal and reasonable basis for rates on flitches, planks, and billets is that applicable on lumber. The Illinois Central and the Yazoo & Mississippi Valley reduced the rate on flitches to the rough-material basis upon representations, from complainant and others,

that on account of shortage of labor and equipment in the forests it was desirable to move the raw material to the manufacturer without cutting it into billets; and also because it was represented that fitches were generally of irregular sizes, only one step removed from logs in point of manufacture, and were, like billets, seldom used by manufacturers of articles other than those made by complainant. Defendants object to extending these rates to planks, which are rough lumber and which may be used in the manufacture of many articles other than vehicle material. They urge that if this low basis were applied on planks for complainant it would have to be applied on planks for manufacturers of such commodities as box material, flooring, and furniture, and eventually on all kinds of rough lumber, thereby disrupting the present lumber-rate adjustment. Because of their close analogy to planks the Mobile & Ohio has consistently refused to apply the rough-material rates on fitches. Defendants assert that rather than jeopardize the lumber-rate adjustment by extending the rough-material basis to planks they would prefer to cancel its application to fitches or billets, or both.

The arrangements under which these rough-material rates are applied is in the nature of transit. Defendants should not be required to extend these arrangements to cover additional articles except as an alternative in removing unjust discrimination or undue prejudice. In order to constitute undue prejudice under section 3 a competitive relation between the persons, localities, or descriptions of traffic concerned must generally appear. No such competitive relation is shown here. The record, therefore, does not warrant a finding of undue prejudice.

Defendants compare the rates attacked with rates maintained by other carriers on the same material for similar distances from and to points in central territory, and from points in Kentucky, Mississippi, Tennessee, Louisiana, Arkansas, and other states to Memphis, Cairo, and other points. These comparisons clearly demonstrate that the assailed rates are not in themselves or relatively unreasonable. The fact that defendants have accorded to one article a basis of rates below normal is of itself no reason, in the absence of unjust discrimination or undue prejudice, for requiring the establishment of the same rates on analogous articles, especially where, as in this instance, the complainant is directly benefited by the lower basis of rates already in effect. There appears also to be merit in defendants' contention that since planks are used much more extensively than fitches or billets in the manufacture of box material, furniture, and other commodities, to accord the rough-material rates on hickory planks for complainant might readily open the door for complaints from other wood-work manufacturers, result in a disturbance of the lumber-rate adjustment, and cause unwarranted depletion of the carriers' revenues.

The tariff rules of the Illinois Central provide that on shipments of rough material originating at points on connecting lines, the rough-material rates will apply from junction points with such connecting lines to certain Illinois Central destinations, when no joint rates are in force from the points of origin to the same destinations. Complainant receives a portion of its raw material from points on the Batesville Southwestern Railroad, a short line 17 miles in length connecting with the Illinois Central at Batesville, Miss. Prior to June 25, 1918, a joint rate of 16 cents was in effect from Crowder, Miss., and other points on the Batesville Southwestern to Cairo. Contemporaneously from the same points of origin a local rate of 3.5 cents to Batesville and the rough-material rate of 10 cents thence to Cairo were in effect, resulting in an aggregate of 13.5 cents. At present the joint rate is 25 cents and the aggregate would be 21 cents, as increased by general order No. 28 of the Director General of Railroads and under the general increases of 1920. Under the tariff rule of the Illinois Central the combination was not and is not applicable from Crowder and other points on the Batesville Southwestern to Cairo. During the period covered by the complaint, complainant paid charges at the joint rate, higher than the sum of the intermediates, on certain shipments of billets and flitches.

The rough-material rate from Batesville to Cairo is not so restricted as to prevent its use as a factor in constructing through rates to Cairo in the absence of a joint rate. The departure from the fourth section of the act is not protected by an application on file, and therefore the joint rate was and is unlawful.

We find that the rates attacked, except the joint rate from points on the Batesville Southwestern to Cairo, were and are not unreasonable or unduly prejudicial; but that said joint rate was and is unreasonable to the extent that it exceeded and exceeds the aggregate of intermediate rates contemporaneously in effect from and to the same points; that complainant made shipments as described and paid and bore the charges thereon; that it has been damaged in the amount of the difference between the charges so paid and those which would have accrued at the rates herein found reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation can not be determined on this record. Accordingly complainant should comply with rule V of the Rules of Practice.

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INVESTIGATION AND SUSPENSION DOCKET No. 1424.

FRUITS AND VEGETABLES TO HASTINGS AND GRAND ISLAND, NEBR.

Submitted November 28, 1921. Decided December 17, 1921.

Increased rates proposed on fruits and vegetables, in carloads, from points in Texas to Hastings and Grand Island, Nebr., found not justified. Suspended schedules ordered canceled and proceeding discontinued.

H. A. Scandrett and J. M. Souby for respondents.

W. H. Young for Nebraska-Iowa Wholesale Fruit Dealers Association; *E. P. Ryan* for Chamber of Commerce of Grand Island, Nebr.; and *G. J. Olson* for Chamber of Commerce, Hastings, Nebr., protestants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

By schedules filed to become effective October 17, 1921, respondents proposed to increase their rates on certain fruits and vegetables, in carloads, from points in Texas to Hastings and Grand Island, Nebr. Upon protests of the chambers of commerce of Grand Island and Hastings and the Nebraska-Iowa Wholesale Fruit Dealers Association, operation of the schedules was suspended until February 14, 1922.

Grand Island is a division terminal on the main line of the Union Pacific 144 miles southwest of Omaha, Nebr., and 277 and 238 miles northwest of Kansas City and St. Joseph, Mo., respectively, and is the northern terminus of the St. Joseph & Grand Island, hereinafter called the Grand Island. It is also on the line of the Chicago, Burlington & Quincy, hereinafter called the Burlington, extending from Omaha to Billings, Mont. Hastings is about 23.4 miles south of Grand Island on the Grand Island and on the main line of the Burlington from Omaha to Denver, Colo.

The usual basis for making rates from points in Texas to destinations in Nebraska west of Lincoln, Nebr., is combination of the rates to and beyond Kansas City, Omaha, or some other Missouri River point, or Lincoln. The joint rates on fruits and vegetables from Texas to Hastings and Grand Island have been and are exceptions. Since 1911 these rates have been based on the combination of the rates to and beyond Edgar, Nebr., a junction of the Burlington and the

Grand Island, 26.7 and 50.1 miles southeast of Hastings and Grand Island, respectively. Since 1911 commodity rates on fruits and vegetables from the Texas producing points to the so-called Omaha-Davenport (Iowa) group have applied to Edgar, which is not intermediate to any point in that group by way of any lines over which the group rates apply. No explanation is offered of the original establishment of that basis to Edgar. On February 29, 1920, Edgar was eliminated from the list of points taking the Omaha-Davenport basis. Since that date the joint commodity rates to Hastings and Grand Island have been less than the lowest combination of the intermediates, which bases on Davenport, Nebr., junction of the Chicago & North Western and the Grand Island, about 9 miles southeast of Edgar. The Omaha-Davenport basis applies to Davenport, that point being intermediate to Omaha over the Chicago & North Western through Superior.

Respondents proposed by the schedules under suspension that their present rates to Hastings and Grand Island, on berries, in carloads, on cantaloupes, in straight carloads and in mixed carloads with watermelons and vegetables, and on certain green vegetables, including onions without tops, in carloads, should be increased to equal the combination of the intermediate rates to and beyond Davenport. At the hearing it was stated on behalf of respondents that they now desire to establish rates to Grand Island the same as the proposed rates to Hastings. This would result in reductions in the present rates to Grand Island on practically all the fruits and vegetables under consideration and establish at that point a basis lower than the lowest combination. To Hastings the proposed increases represent the amounts by which the rates to that point from Davenport exceed the rates from Edgar.

The present rates and those now proposed on representative commodities, in cents per 100 pounds, follow:

	Present.		Proposed: Hastings and Grand Island.
	Hastings.	Grand Island.	
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Strawberries.....	179	190.5	188
Cantaloupes.....	118	121.5	120
Asparagus, green beets, and onions with tops; cauliflower, green peas and peppers, lettuce, etc.....	123.5	135	127.5

Under the present rates the carload minimum weight applicable on some of the commodities beyond the basing point exceeds that to the basing point. Respondents proposed at the hearing to reduce the minimum north of the basing point to that applicable south thereof.

Respondents contend that the rates to Hastings should be restored to their normal bases, and in support cite *Substitution for Increases in Rates*, 61 I. C. C., 518, wherein we authorized the carriers to revise their joint class and commodity rates between points in the southwestern territory, including Texas, and points in defined territories east of the Indiana-Illinois state line and the Mississippi River, Cairo, Ill., and south, originally established, and, prior to August 26, 1920, maintained or intended to be maintained, on the basis of the lowest combination of local rates to and beyond the Mississippi River crossings or other rate-basing points, so as to reflect the combinations of local rates then existing. The parity between the joint and combination rates had been disrupted by the varying general percentage increases of 1920.

The increases here proposed present a different situation. The relation of the joint rates to Hastings and Grand Island to the lowest combinations of intermediates was not disturbed by the general increases of 1920, the per cent of increase being the same in the joint rates as in the factors upon combination of which the joint rates are based. No evidence was introduced by respondents respecting the intrinsic reasonableness of the proposed increased rates to Hastings.

Protestants contend that the proposed increases to Hastings would subject dealers in fruits and vegetables at that point to a substantial disadvantage in jobbing in the territory contiguous thereto, as compared with the present rates to and from Lincoln, not proposed to be increased, with which point Hastings is in active competition.

While many joint rates from Texas to points in central and western Nebraska are based on the lowest combination of intermediates, our attention is called to the fact that respondents maintain joint rates on some commodities to Nebraska points that are substantially less than the lowest combination, notably potatoes from Texas, bananas from the Gulf ports, and cement from interstate points. Protestants urge that the joint rate should be somewhat lower than the combinations and cite *Watertown Sash & Door Co. v. Director General*, 55 I. C. C., 186. We there found that the rates on glass, in carloads, from producing points in Kansas to South Dakota destinations were unduly prejudicial to the extent that they exceeded the aggregate of the commodity rates to the basing points, Sioux City, Iowa, Sioux Falls, S. Dak., and Pipestone, Minn., plus 75 per cent of the local class rates beyond.

We find that the schedules under suspension have not been justified. An order will be entered requiring their cancellation and discontinuing this proceeding.

THE ILLINOIS COAL CASES, 1920.

No. 10783.

COAL TRADE BUREAU OF ILLINOIS

v.

DIRECTOR GENERAL, CHICAGO, BURLINGTON & QUINCY
RAILROAD COMPANY, ET AL.

No. 10815.

SPRING VALLEY COAL COMPANY ET AL.

v.

DIRECTOR GENERAL, AS AGENT, ATCHISON, TOPEKA &
SANTA FE RAILWAY COMPANY, ET AL.

No. 11091.

CENTRAL ILLINOIS COAL TRAFFIC BUREAU

v.

DIRECTOR GENERAL, ATCHISON, TOPEKA & SANTA FE
RAILWAY COMPANY, ET AL.

No. 11149.

FIFTH AND NINTH DISTRICTS COAL BUREAU

v.

DIRECTOR GENERAL, ATCHISON, TOPEKA & SANTA FE
RAILWAY COMPANY, ET AL.*Decided December 12, 1921.*

Upon further consideration, differentials found lawful in original report, 62 I. C. C., 741, found to be just and reasonable maximum and minimum differentials.

SUPPLEMENTAL REPORT OF THE COMMISSION.

BY THE COMMISSION:

In our original report in these cases, 62 I. C. C., 741, we considered rates on coal from mines in Illinois and found, *inter alia*, that:

* * * the rates assailed to the northwest are not unreasonable or otherwise unlawful except to the following extent: (1) Rates from the Third Vein, Springfield, and Belleville districts to points in the northwest are and will be unduly prejudicial to operators in the districts named to the extent that they

are less than 70 cents, 30 cents, and 10 cents per ton, respectively, below the rates contemporaneously maintained to the same destinations from the southern Illinois group; and (2) the rates from the Fulton-Peoria district to destinations in eastern Iowa referred to more specifically in the complaint in No. 10783, are and will be unduly prejudicial to the districts named to the extent that they are less than 40 cents and 70 cents per ton below the rates contemporaneously maintained to the same destinations from the Springfield and southern Illinois districts, respectively.

and that—

* * * the rates from the Belleville district to points in Missouri and southern Iowa, except Missouri River cities, to which the traffic moves through St. Louis, are not unreasonable, but that they are, and for the future will be, unduly prejudicial to operators in that district and unduly preferential of their competitors in the southern Illinois district to the extent that the rates from the Belleville district are less than 22.5 cents per ton lower than those contemporaneously in effect from southern Illinois.

We are asked to state whether the differentials named are to be considered maximum as well as minimum differentials or whether the carriers are required to “restore the relative adjustments of coal rates” in effect on August 25, 1920, in conformity with our decision in *Increased Rates, 1920*, 58 I. C. C., 220, 248.

In our original report herein at page 750, we said that the differentials of 70, 30, and 10 cents from the Third Vein, Springfield, and Belleville districts, respectively, in rates to the northwest under the rates from southern Illinois are not unreasonable or otherwise unlawful; and at page 751, with respect to the rates from the Fulton-Peoria district to points in Iowa, we said that the reasons for the departure from the differential basis of 40 and 70 cents theretofore existing had disappeared. With respect to the rates from the Belleville district to points in Missouri and Iowa, except Missouri River cities, we stated at page 755 that to much of this territory the rates are based on rates to and from St. Louis and reflect the differentials in effect at the latter point. The differential from the Belleville district to points in Missouri and southern Iowa, except Missouri River points, of 22.5 cents under the rates from southern Illinois, was the same as that found nonprejudicial by us on traffic to St. Louis.

Upon further consideration we find that the differentials found lawful in our original report herein are and for the future will be just and reasonable maximum and minimum differentials. The defendants should establish differentials no greater nor less than the differentials herein found to be just and reasonable.

No. 12541.

MIDLAND LINSEED PRODUCTS COMPANY

v.

DIRECTOR GENERAL, AS AGENT, NEW YORK, SUSQUEHANNA & WESTERN RAILROAD COMPANY, ET AL.

Submitted July 9, 1921. Decided December 22, 1921.

Rates on linseed oil, in carloads, from Undercliff, N. J., to Newark, N. J., during federal control, found not unreasonable or otherwise unlawful. Complaint dismissed.

E. A. Hodgkinson for complainant.

Marion B. Pierce and *Thomas M. Woodward* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Complainant, a corporation, produces linseed oil and oil cake and meal at Edgewater, N. J. By complaint filed February 25, 1921, as amended, it alleges that the rate charged on numerous carloads of linseed oil shipped during federal control from Undercliff, N. J., to Newark, N. J., were unreasonable, unjustly discriminatory, and unduly prejudicial. Reparation only is sought. Rates will be stated in cents per 100 pounds.

The shipments moved as routed by the shipper over the New York, Susquehanna & Western to Weehawken, N. J., and the Central of New Jersey beyond, approximately 20 miles. Charges were collected at the applicable fifth-class rates of 11 cents prior to June 25, 1918, and 14 cents thereafter. Complainant contends that these rates were excessive to the extent that they exceeded the fifth-class rates of 9.5 and 12 cents, respectively, contemporaneously in effect from and to the same points over the lines of the originating carrier and the Pennsylvania. The fifth-class rates over the lines of the originating carrier and the Erie were 8.5 and 10.5 cents before and after June 25, 1918, respectively. Commodity rates on certain oils and syrups from and to points within the territory of movement are equalized over the lines above mentioned. The transportation conditions attending the movement between these points are

not disclosed. Complainant urges that as all these carriers were under federal control the same rates should have applied over all routes, citing *Gill v. Director General*, 59 I. C. C., 119, and *Barrett Co. v. Director General*, 61 I. C. C., 401. In those cases the transportation conditions over the different routes did not materially differ. In this case the distance over the route of movement is longer than over the other routes and the operating costs are higher. Over the other two routes operations were less complex and the service apparently as efficient as over the route of movement. The latter route appears to have been selected because the plant of the consignee was local to the rails of the Central of New Jersey. The class rates from Undercliff to all points in the destination territory were and are uniformly higher for Central of New Jersey than for Pennsylvania or Erie delivery.

The fact that lower rates applied between the same points over other available routes does not, standing by itself, prove the unreasonableness of the rates assailed. There is no other evidence of record to support complainant's allegation.

We find that the rates assailed were not unreasonable or otherwise unlawful. The complaint will be dismissed.

64 I. C. C.

No. 12119.

AULT & WIBORG COMPANY

v.

DIRECTOR GENERAL, AS AGENT, SOUTHERN RAILWAY
COMPANY, ET AL.

Submitted July 18, 1921. Decided December 22, 1921.

Rates on sulphate of barium, in carloads, from Sweetwater, Tenn., to Cincinnati and St. Bernard, Ohio, found not unreasonable or otherwise unlawful. Complaint dismissed.

F. D. Reiley for complainant.

Royal McKenna for Director General, as Agent.

H. L. Walker and *Charles J. Rixey* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation manufacturing chemicals and other commodities at Cincinnati, Ohio, alleges that the rates on sulphate of barium, in barrels, in carloads, from Sweetwater, Tenn., to Cincinnati and St. Bernard, Ohio, since May 1, 1919, have been unreasonable, unjustly discriminatory, and unduly prejudicial to the extent that they exceeded, or exceed, the rates on like traffic from Cartersville, Ga., to the same points. We are asked to prescribe reasonable and nonprejudicial rates for the future and to award reparation.

St. Bernard is within the switching limits of Cincinnati and takes the same rates. Sweetwater is local to the Southern, about 41 miles from Knoxville, Tenn., and 333 miles from Cincinnati. Cartersville is about 438 miles from Cincinnati and is served by the Louisville & Nashville and Nashville, Chattanooga & St. Louis.

Sulphate of barium is obtained from barytes of which there are extensive deposits in Tennessee. It is used mainly as a pigment in the manufacture of various articles. The purchase price at the point of production of complainant's shipments ranged from \$30 to \$70 per gross ton. The latter figure was said to represent the value at the time of the hearing. Prior to the war the value of sulphate of barium ranged from \$40 to \$60 per ton, and of the crude ore at the mines from \$3.50 to \$4.50 per ton, but most of the crude ore came from Germany and was treated in the east.

From May 13, 1919, to October 22, 1920, inclusive, complainant shipped 100 carloads to Cincinnati and St. Bernard, 55 of which moved over the Southern, the Cincinnati, New Orleans & Texas Pacific, and the Louisville & Nashville, and the remainder over the two lines first named and the Baltimore & Ohio. Charges were collected at the applicable commodity rates of 24 cents per 100 pounds prior to August 26, 1920, and 30 cents on and after that date. The rates contemporaneously applicable from Cartersville, Ga., were \$2.50 and \$3.125 per gross ton, equivalent to about 11.2 and 13.95 cents per 100 pounds, respectively.

Complainant points out that under the present adjustment it is possible to ship this commodity in the opposite direction, from Sweetwater to Cartersville, approximately 119 miles, and then re-ship from that point to Cincinnati, at \$1.11 per net ton or 5.55 cents per 100 pounds less than the rate applying direct from Sweetwater to Cincinnati. Complainant relies solely upon the lower rate in effect from Cartersville.

Defendants' position is that the rate from Cartersville is unduly low and should not be used as the measure of the rate from Sweetwater. For many years rates on crude barytes have been in effect from the district which includes Sweetwater, and in 1915 parties who contemplated building a plant at that point for the manufacture of barium products made request for rates on these products. Rates higher by certain amounts than on the crude barytes, according to the stage of manufacture, were accordingly established. Defendants assert that the rate of \$2.50 per gross ton on sulphate of barium from Cartersville to Cincinnati was published through error, and was intended to apply only on the crude barytes. As evidencing the subnormal character of this rate defendants submitted comparisons showing it to be lower than the rates on crude barytes and other low-grade commodities which move from and to the same points. The following is illustrative, the rates shown being those in effect from Cartersville to Cincinnati, 438 miles, just prior to August 26, 1920:

	Value per ton.	Rate.	Revenue per net ton-mile.	Average load.	Revenue per car.
			<i>Mills.</i>	<i>Tons.</i>	
Sulphate of barium.....	\$40.00 to \$60.00	¹ \$2.50	5	¹ 25	\$62.50
Barytes, crude.....	3.50 to 4.50	¹ 3.50	7.1	¹ 40	140.00
Manganese ore.....	10.39	¹ 3.10	6.3	¹ 25	77.50
Limestone, ground.....	4.00	² 3.50	8	² 40	140.00
Ocher.....	9.47	² 3.50	7.5	² 30	99.00
Graphite, crude.....	10.59	² 3.10	7.1	² 24	74.40
Scrap iron.....	8.08	² 4.10	9.3	² 30	123.00

¹ Gross ton.

² Net ton.

Although the rate on sulphate of barium to Cincinnati is higher from Sweetwater than from Cartersville, the rate on crude barytes prior to August 26, 1920, was 30 cents per gross ton lower from Sweetwater and at the present time is 37.5 cents lower. The rates assailed are shown to be appreciably lower than rates for comparable distances from New Orleans, La., and Mobile, Ala., on low-grade commodities such as blackstrap molasses, and from and to numerous points on petroleum, of which there is said to be an actual movement under similar transportation conditions. They also compare favorably with those on the same commodity from Sweetwater to other points and with the rates from other producing points in Tennessee.

Although barytes is produced at Cartersville, sulphate of barium is not manufactured there and no shipments of the latter commodity have moved to Cincinnati or to St. Bernard at the alleged preferential rate. Under such circumstances no finding of undue prejudice can be made. *Standard Asphalt & Refining Co. v. Director General*, 60 I. C. C., 384. The carriers express their intention to raise the rate from Cartersville to what they claim would be a normal basis. The allegation of unjust discrimination was not sustained.

We find that the rates assailed were not and are not unreasonable or otherwise unlawful. The complaint will be dismissed.

No. 11505.

ARIZONA CORPORATION COMMISSION ET AL.

v.

ARIZONA EASTERN RAILROAD COMPANY ET AL.

Submitted March 7, 1921. Decided December 23, 1921.

Rates on cement, in carloads, from Colton, Oro Grande, and Victorville, Calif., to certain points in Arizona found unreasonable and unduly prejudicial. Reparation denied.

F. A. Jones, Roland Johnston, and Amos A. Betts for complainants.

R. C. Fulbright and C. C. Lassiter for Southwestern Portland Cement Company; and *O. T. Heopling* for Riverside Portland Cement Company, interveners.

Elmer Westlake, M. A. Cummings, W. C. Barnes, Eugene Fox, G. H. Baker, and E. W. Camp for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by complainants to the report proposed by the examiner. We have reached conclusions differing somewhat from those proposed by him.

Complainants are the Arizona Corporation Commission, the state of Arizona, Maricopa county, the city of Phoenix, and the Traffic Bureau, Phoenix Chamber of Commerce. By complaint filed June 15, 1920, they allege that the rates on cement, in carloads, from Crestmore, Colton, Oro Grande, Victorville, and Riverside, Calif., and El Paso, Tex., to points in Arizona stated in designated tariffs of Pacific Freight Tariff Bureau, Southern Pacific, and Atchison, Topeka & Santa Fe, hereinafter called the Santa Fe, are unreasonable, unjustly discriminatory, and unduly prejudicial. We are asked to enter an order requiring defendants to cease and desist from the aforesaid violations of the interstate commerce act; to prescribe rates for the future from the points of origin to the points of destination named in paragraph III of the complaint; and to award reparation to the state of Arizona, Maricopa county, and the city of Phoenix, on shipments moving subsequent to the filing of the complaint.

The rates specifically referred to in paragraph III of the complaint are from El Paso to Phoenix, Bowie, Tucson, Douglas, and to Holbrook on the Santa Fe; from Colton to Phoenix, to Hassayampa on the Arizona Eastern just west of Phoenix, to Yuma and to Parker and Wickenburg on the Santa Fe northwest of Phoenix; and from Oro Grande and Victorville to Phoenix, Holbrook, Yuma, and to Parker and Kingman on the Santa Fe. The evidence adduced relates chiefly to destinations on the El Paso & Southwestern, Southern Pacific, and Arizona Eastern. Rates will be stated in cents per 100 pounds, and do not include the general increases of 1920. Except as noted, destinations referred to herein are located in Arizona. Most of them are shown on the map at page 587 of *Pacific Creamery Co. v. S. P. Co.*, 34 I. C. C., 586.

The Southwestern Portland Cement Company of El Paso intervened in opposition to the complaint, and the Riverside Portland Cement Company of Crestmore in support of it.

Colton and Crestmore, cement-producing points, are grouped with Los Angeles, San Pedro, Wilmington, and Riverside, Calif., with respect to rates on cement to Arizona destinations. These producing points will be referred to collectively as the Colton group. Rates from the Colton group and from El Paso are blanketed to certain Arizona destinations hereinafter described to permit both to compete on a parity in common territory, and to provide two sources of cement supply for Arizona purchasers. Along the line of the Southern Pacific a blanket rate of 27 cents from the Colton group extends easterly from Yuma, 191 miles, to and including Tucson, 443 miles, thus embracing a blanketed destination territory of 252 miles. East of Tucson, the Colton group rate of 32 cents extends to Bowie, 557 miles from Colton, a blanket of 114 miles. This rate applies to Nogales, Douglas, Fairbanks, Bisbee, and other points on Southern Pacific branch lines south of Tucson and Benson, and on the El Paso & Southwestern. A rate of 42 cents applies from the Colton group to points on the Globe division of the Arizona Eastern, including Globe, 681 miles from Colton, Miami, and Amster on branch lines of that division, and to points on the Arizona & New Mexico via Lordsburg, N. Mex., including Clifton and Morenci, respectively 676 and 683 miles from Colton. From El Paso a rate of 27 cents is blanketed from Lordsburg, 149 miles from El Paso, to Gila, 442 miles from El Paso, thus embracing a territory of 293 miles. This rate is extended to Nogales, 354 miles from El Paso, on the Southern Pacific branch from Benson, and to Fairbanks and Bisbee on the El Paso & Southwestern, respectively 275 and 246 miles from El Paso; to points on the Arizona & New Mexico, including Clifton and Morenci, respectively 218 and 225 miles from El Paso; and to

points on the Globe division of the Arizona Eastern, including Globe, 323 miles from El Paso. To Miami and Amster, on branch lines of the Globe division, the rate from El Paso is 28.5 cents. To Douglas, 217 miles from El Paso, a rate of 22 cents applies via the El Paso & Southwestern. West of Gila, the El Paso rate of 32 cents extends to Yuma, 565 miles from El Paso, a blanket of 123 miles. A rate of 27 cents common to both the Colton group and El Paso applies to the territory on the Southern Pacific, Tucson to Gila, a distance of 129 miles.

A rate of 28.5 cents applies from both the Colton group and El Paso to Ajo, a point 44 miles south of Gila on the Tucson, Cornelia & Gila Bend, 358 miles from Colton and 486 miles from El Paso. From both the Colton group and El Paso a rate of 32 cents applies to Phoenix, 391 miles from Colton and 435 miles from El Paso on the Arizona Eastern, and to points on the Hayden branch of the same carrier to and including Winkelman, 478 miles from Colton and 522 miles from El Paso. Phoenix is 35 miles north of Maricopa, the junction between the Arizona Eastern and Southern Pacific, which junction is 42 miles east of Gila. To points on the Hassayampa branch of the Arizona Eastern west of Fowler a rate of 35 cents applies from both El Paso and the Colton group, the distance to Hassayampa, the farthest point, being 430 miles from Colton and 476 miles from El Paso. The Santa Fe meets the 32-cent rate at Phoenix via its circuitous route of 804 miles from El Paso, and holds it as maximum to intermediate points on the Phoenix division and on the main line as far east as Dalies, N. Mex. That carrier publishes a rate of 32 cents from the Colton group to Parker, on its Parker cut-off; the same rate is blanketed to destinations on the main line, between Topock, 266 miles from Colton, and Winslow, 546 miles from Colton, and is extended on the Phoenix division to Prescott and Wickenburg, respectively 461 and 378 miles from Colton.

Other cement mills in southern California are located at Oro Grande and Victorville, on the Santa Fe and Salt Lake lines, respectively 54 and 48 miles north of Colton over the Salt Lake. The rates from these points are 29.5 cents to Yuma, 31 cents to Parker and Topock, 32 cents to Phoenix, and generally 2.5 cents higher than the Colton group to other points on the Southern Pacific, Arizona Eastern, and El Paso & Southwestern. On the Santa Fe the Victorville-Oro Grande rate is lower than the Colton group, until at Hobson, just east of Winslow, Oro Grande and Colton each take 36 cents.

The rate from Oro Grande and Victorville to Phoenix applies over the Salt Lake route to Colton or the Santa Fe to Riverside, the

Southern Pacific to Maricopa, and the Arizona Eastern beyond. The line of the Santa Fe through Barstow and over the Parker cut-off is somewhat shorter, but the rate does not apply that way. Complainants contend that by virtue of the shorter distance and the fact that between Oro Grande-Victorville and the Southern Pacific junctions severe grades are encountered in crossing the San Bernardino mountains, the rate should be made to Phoenix and through Phoenix to Maricopa, Tucson, and points east thereof over the Santa Fe. The Parker cut-off from Cadiz to Wickenburg is branch-line construction consisting of 65-pound rails, with light bridges. The eastbound train tonnage limit, Cadiz to Parker, is 1,200 gross tons, and from Parker east 800 gross tons. Only one regular freight train runs daily each way on this line, and it is operated as a mixed train from Parker to Wickenburg. From Oro Grande to Wickenburg the road is described as "a bridge crossing the desert," and apparently sufficient local tonnage is not produced to pay for its maintenance. Except from Maricopa to Phoenix, the present routes from Oro Grande and Victorville to Phoenix are over the main lines of transcontinental railroads, and are reasonably sufficient. The record does not warrant requiring the establishment of a route by way of the Parker cut-off.

The present group system of rates to Arizona creates certain inequalities between destinations. Complainants advocate the abolition of the grouping system and the substitution of rates based on distance. Defendants admit that a blanket extending over a territory of 252 miles for a total distance of only 443 miles is not proper, but they are seriously opposed to the establishment of a distance scale. In this territory it has long been customary to group destinations when establishing rates on cement.

Complainants urge that the rates in issue are unreasonable, in so far as they exceed other cement rates within the mountain-Pacific group. They compare the car, car-mile, and ton-mile revenues yielded by the rates from Colton to Yuma, Oro Grande to Parker, and El Paso to Bowie, with similar yields under cement rates between points in the mountain-Pacific group for approximately equal distances. The distances to the Arizona points selected are, in many instances, the minima of their respective groups. Neither extreme of the group should be considered, but rather a fair average.

The rates from El Paso, Colton, Oro Grande, and Victorville to representative destinations in Arizona are compared with interstate rates for approximately similar distances between other points in the mountain-Pacific group and between various points in Missouri, Iowa, Kansas, Nebraska, Wisconsin, Minnesota, Oklahoma, and Illinois.

Complainants argue that the yield under the rates on cement to Arizona per car, car-mile, and ton-mile, indicates that they are unduly high. During June, 1920, the movement of cement from Crestmore to Arizona points was as follows: 14 cars to Phoenix, average load 43.5 tons per car, 20 cars to Bisbee, average load 47.64 tons per car, 1 car to Flagstaff, 32 tons, and 1 car to Douglas, 35.2 tons. The rate from Colton to Phoenix yields, on basis of the average weight of the shipments to Phoenix and Bisbee, 45.5 tons, \$291.20 per car, 74.4 cents per car-mile, and 16.36 mills per ton-mile. Complainants compare these with average earnings during 1919 of 43.08 cents per car-mile and of 15.88 mills per ton-mile on all traffic of the Santa Fe, Southern Pacific, El Paso & Southwestern, and Arizona Eastern. From January 31 to October 12, 1916, 133 cars were transported from Crestmore to various Arizona points upon which the average loading was 35.09 tons per car. Defendants showed that 294 cars, averaging 41 tons per car, were shipped from California producing points and El Paso to points on the Southern Pacific in Arizona during the period March 1 to July 31, 1920.

The earnings per car, car-mile, and ton-mile, under the rates from Colton to Yuma, Phoenix, Tucson, and Douglas, computed on an average loading of 41 tons, are shown below:

To—	Distance.	Rate.	Revenue per car.	Car-mile earnings.	Ton-mile earnings.
	<i>Miles.</i>	<i>Cents.</i>			<i>Mills.</i>
Yuma.....	191	27	\$221.40	\$1.16	28.3
Phoenix.....	391	32	262.40	.67	16.4
Tucson.....	443	27	221.40	.50	12.2
Douglas.....	567	32	262.40	.46	11.3

Defendants assert that there are few points on the Santa Fe to which cement is hauled such long distances as from California to Arizona. The hauls in California are frequently for short distances where operating conditions are more favorable and cement moves in larger volume through a territory of greater traffic density. Yet, on the whole the cement rates in California yield, for the shorter hauls, greater revenue per car, car-mile, and ton-mile, than the rates assailed. They urge that the cement rates in California as well as those under attack are higher in car-mile revenue than practically any other commodity, chiefly because of heavy loading.

In *Riverside Portland Cement Co. v. R. & P. R. R. Co.*, 57 I. C. C., 291, with respect to the reasonableness of rates on cement from Crestmore to Miami, Globe, Tucson, Nogales, Yuma, Morales, Willcox, Red Rock, Casa Grande, Fort Huachuca, Bisbee, and Douglas, Ariz., during the period from January to October, 1916, inclusive, we said, at page 292:

There is no evidence of record tending to show that the combination rates from Crestmore or their component parts, were, during the period covered by the complaint, unreasonable *per se*. On the contrary, the evidence adduced as to prevailing rates on cement from other producing points, and rates on analogous articles in the same general territory, indicates that the rates assailed were not unduly high.

Complainants' evidence was directed principally against the rates from California producing points. From El Paso to Arizona points on the Southern Pacific, El Paso & Southwestern, and Arizona Eastern, operating conditions are as favorable, the density of traffic is as great, and the movement of cement is as heavy, as from California to the same points.

The rates and distances from Colton and El Paso to Phoenix and Tucson are as follows:

From—	To Phoenix.		To Tucson.	
	Rate.	Distance.	Rate.	Distance.
	<i>Cents.</i>	<i>Miles.</i>	<i>Cents.</i>	<i>Miles.</i>
El Paso.....	32	435	27	313
Colton.....	32	391	27	443

Defendants argue that as Phoenix is located on the Arizona Eastern 35 miles from the main line, a somewhat higher rate to that point than the rate of 27 cents applied to Maricopa, the junction point, and to other main-line stations of the Southern Pacific is justified. Phoenix is well within the present blanketed territory of destination and it appears that, notwithstanding its location on the Arizona Eastern, it was on a parity with Tucson from both producing points almost from the inception of the cement commodity rates until, according to the defendants, the lower rate was accorded Tucson, "to enable cement to get into Tucson against local building material."

In *Pacific Creamery Co. v. S. P. Co.*, 42 I. C. C., 93, we established rates on fuel oil, refined oil, and engine distillate, in carloads, from Bakersfield and Los Angeles to Phoenix, somewhat lower than similar rates to Tucson. In that decision we said, at page 96:

Practically all the stock of the Arizona Eastern is owned by the Southern Pacific, the controlling line. These lines should not be treated as two lines, even for distances under 500 miles.

Phoenix and Tucson both use large quantities of cement. From Colton, the class rates to those cities are on a parity. Phoenix is accorded lower rates on asphalt, fuel oil, and soda bicarbonate than Tucson. The same rate is in effect to both points on bagging, canned goods, brick, common and glazed, coffee, and paper bags. Asphalt competes with cement in paving, and brick competes with

it in building and other construction work. It seems clear that Phoenix should take the same rates as Tucson on cement from Colton.

The present blanketed destination territory is admittedly too large. The rates from Colton to Phoenix, Hassayampa, and Yuma, and from Oro Grande and Victorville to Phoenix and Yuma are unduly prejudicial as compared with the rates to Tucson, Nogales, Fairbanks, Douglas, Bowie, Bisbee, and other destinations similarly situated. In our judgment the present groups should be divided and the rates made with more regard to distance.

We will limit our findings to those points specifically named in paragraph III of the complaint and no rates will be prescribed from El Paso, because of lack of necessary parties defendant, nor to destinations on the Santa Fe, because of lack of satisfactory evidence. There is no proof of unjust discrimination.

We find that the rates assailed, as limited by the next preceding paragraph, were, are, and for the future will be unreasonable and unduly prejudicial to the extent that they exceeded, exceed, or may exceed the rates shown, in cents per 100 pounds, in the following table, subject as of August 26, 1920, to the increases authorized in *Increased Rates, 1920*, 58 I. C. C., 220:

	Cents.
Colton, Calif., to Phoenix.....	28
Colton, Calif., to Yuma.....	24
Colton, Calif., to Hassayampa.....	31
Oro Grande and Victorville to Phoenix.....	30.5
Oro Grande and Victorville to Yuma.....	26.5

We will not attempt at this time to suggest rates from and to other points of origin and destination, but defendants will be expected to remove the undue prejudice by properly aligning other rates with due regard to distance. There is no proof of shipments made at, or of damage due to, the rates assailed. Reparation is therefore denied.

An appropriate order will be entered.

HALL, *Commissioner*, dissenting:

The report includes a finding that there is no proof of unjust discrimination. That is true. It is also true that there is no proof of undue prejudice, but the finding is otherwise. From that I dissent. What the undue prejudice is; who suffers it, whether shipper, receiver, or locality; and who, if anyone, is unduly preferred, are questions left unanswered by the report. Removal of the undue prejudice found is not required. The finding is thus but *brutum fulmen*.

CASES DISPOSED OF BY THE COMMISSION WITHOUT PRINTED REPORT DURING THE TIME COVERED BY THIS VOLUME.

I. & S. 1326. ABSORPTION OF SWITCHING CHARGES AT TOLEDO, OHIO (2). Absorption of switching charges at Toledo, Ohio. *L. G. Macomber* for protestants. *J. Stillwell* for respondents. Proceedings discontinued Oct. 31, 1921.

I. & S. 1350. CANCELLATION OF COMBINATION RULES. Proposed cancellation of rule for constructing rates on combination basis. *H. N. Proebetel*, *G. W. Shooks*, and *R. G. Hyett* for protestants. *F. A. Leland* and *W. J. Kelly* for respondents. Proceeding discontinued Oct. 22, 1921.

I. & S. 1368. RATES TO AND FROM EL PASO, TEXAS, AND EL PASO RATE POINTS. Proposed increase in rates to and from El Paso, Tex. *F. C. Tockle* for protestant. *F. A. Leland* for respondent. Proceeding discontinued Oct. 22, 1921.

I. & S. 1383. CLASSIFICATION RATINGS ON FRESH FRUITS AND VEGETABLES. Ratings on fruits and vegetables in western territory. *S. F. Mauk*, *F. C. Tockle*, *F. A. Jones*, *D. R. Johnson*, *H. H. Williams*, and *B. Wright* for protestants. *F. W. Gompf* for respondents. Proceeding discontinued Oct. 31, 1921.

I. & S. 1390. CEDAR POLES FROM MINNESOTA TO CANADIAN POINTS. Proposed increases in rates on cedar poles from Minnesota to Canada. *T. M. Partridge* and *N. E. Boucher* for protestants. *J. G. Morrison* for respondents. Proceeding discontinued Dec. 5, 1921.

I. & S. 1392. TREATING FOREST PRODUCTS IN TRANSIT IN IDAHO, MONTANA, OREGON, AND WASHINGTON. Proposed increased charges on treating arrangements on forest products at points in Idaho, Montana, Oregon, and Washington. *S. J. Henry*, *G. H. Ramsey*, *F. S. Fulwiler*, and *J. R. Gray* for protestants. *P. H. Burnham*, *R. W. Pickard*, and *J. R. Veitch* for respondents. Proceeding discontinued Dec. 5, 1921.

I. & S. 1395. CEMENT, CARLOADS, FROM SPOCARI, ALA., TO SHREVEPORT, LA. Proposed increases in cement from Spocari, Ala., to Shreveport, La. *B. M. Angell* and *J. H. Glenn* for protestants. *W. H. Paxton* for respondents. Proceeding discontinued Dec. 5, 1921.

I. & S. 1400. FRUITS, MELONS, AND VEGETABLES FROM SOUTHWEST TO CENTRAL AND TRUNK LINE POINTS. Proposed increases in rates on fruits, melons, and vegetables from the southwest to central and trunk line territories. *F. H. Baer*, *L. G. Macomber*, *H. W. McNeely*, and *H. D. Rhodehouse* for protestants. *F. A. Leland* for respondents. Proceeding discontinued Dec. 17, 1921.

I. & S. 1417. PROPORTIONAL RATES ON GRAIN TO GLADSTONE, MICH. Proposed increases in rates on grain to Gladstone, Mich. *J. L. Bowlus*, *J. S. Brown*, and *F. S. Keiser* for protestants. *E. F. Rice* for respondent. Proceeding discontinued Dec. 5, 1921.

I. & S. 1423. COAL FROM WYOMING MINES TO STATIONS IN UTAH. Proposed increases in rates on coal from Wyoming mines to points in Utah. *H. W. Prickett* for protestants. *L. T. Wilcox* for respondents. Proceeding discontinued Oct. 29, 1921.

11030. LAMPERT LUMBER Co. v. DIRECTOR GENERAL. Rates on cedar shingles, siding, and lumber from Vancouver, B. C., and points in Washington to Charles City, Kanawha, and other points in Iowa. *S. B. Houck* for complainant. *L. R. Capron* for defendants. Complaint satisfied. Dismissed Dec. 5, 1921.

11175. DU PONT DE NEMOURS & Co. v. DIRECTOR GENERAL. Rates on crude sulphur or brimstone from New York, N. Y., to Newark, N. J. *H. F. Farrow* for complainant. *A. Dodson* and *H. W. Bicklé* for defendants. Dismissed on request of complainant, Oct. 31, 1921.

11370. UNIVERSAL PETROLEUM Co. v. DIRECTOR GENERAL, AS AGENT. Rates on gasoline from Wilson, Okla., to El Paso, Tex. *J. A. Ronan* for complainant. *T. J. Freeman*, *G. Thompson*, *T. J. Norton*, *F. E. Andrews*, and *J. F. Finerty* for defendants. Transferred to Special Docket for adjustment. Oct. 10, 1921.

11550. GENTILE & Co. v. A. C. L. R. R. Co. Rates on one carload of potatoes from Moorehaven, Fla., to Cincinnati, Ohio. *P. P. Forrester* for complainant. *J. F. Finerty*, *F. W. Gwathmey*, and *W. A. Northcutt* for defendants. Transferred to Special Docket for adjustment, Nov. 28, 1921.

11782. CONSOLIDATED COAL Co. OF ST. LOUIS v. DIRECTOR GENERAL, AS AGENT. Misrouting of five carloads of coal from Staunton, Ill., to West Pullman, Ill. *S. B. Houck* and *W. A. Holley* for complainant. *R. McKenna* for defendant. Complaint satisfied. Dismissed Nov. 1, 1921.

11793. PARLIN & ORENDORFF Co. v. DIRECTOR GENERAL, AS AGENT. Rates on coal screenings from Illinois points to Canton, Ill. No appearances for complainant. *R. McKenna* for defendant. Transferred to Special Docket for adjustment, Nov. 7, 1921.

11826. FULLERTON POWELL HARDWOOD LUMBER Co. v. DIRECTOR GENERAL, AS AGENT. Rate on one carload of lumber from White Top Gap, Va., to Minneapolis, Minn. *R. D. Burbank* for complainant. *A. M. Bull* for defendant. Transferred to Special Docket for adjustment, Nov. 7, 1921.

11952. LEVITE ET AL. v. T. & P. RY. Co. Rates on scrap iron from Willetts and Ferriday, La., to Natchez, Miss. *B. F. Martin* and *E. E. Warmath* for complainants. *J. M. Chaney* and *F. B. Clark* for defendants. Dismissed on request of complainants, Oct. 31, 1921.

12051. ABELES & Co. v. DIRECTOR GENERAL, AS AGENT. Rates on common window glass from Fort Smith, Ark., to Little Rock, Ark. *G. J. Vizard* for complainant. *J. M. Chaney*, *F. B. Clark*, and *H. R. Dever* for defendants. Transferred to Special Docket for adjustment, Nov. 14, 1921.

12089. MEMPHIS FREIGHT BUREAU, for PHOENIX COTTON OIL Co. v. DIRECTOR GENERAL, AS AGENT. Rates on cottonseed oil in tank cars from Brownsville, Tenn., to Memphis, Tenn. *J. S. Davant* for complainant. No appearances for defendants. Transferred to Special Docket for adjustment, Dec. 12, 1921.

12207. SWIFT & Co. v. C., R. I. & P. RY. Co. Rates on green salted hides from North Fort Worth, Tex., to South St. Joseph, Mo. *R. D. Rynder* for complainant. *J. F. Finerty* for defendants. Transferred to Special Docket for adjustment, Oct. 17, 1921.

12239. CAIRO ASSO. OF COMMERCE v. A., T. & S. F. RY. Co. ET AL. Rates on lumber and lumber articles from points in Missouri to points in Illinois. *R. Williams* for complainants. *J. M. Chaney*, *F. B. Clark*, *A. J. Lehmann*, and *A. T. Sullivan* for defendants. Complaint satisfied. Dismissed Dec. 5, 1921.

12261. TEXAS STAR FLOUR MILLS v. DIRECTOR GENERAL, AS AGENT. Rates on flour from Galveston, Tex., to New Orleans, La. *J. J. Gibson*, *E. J. Thornton*, and *H. B. Cummins* for complainants. *W. V. Knight* for defendants. Transferred to Special Docket for adjustment, Dec. 12, 1921.

12343. ANACONDA COPPER MINING CO. *v.* DIRECTOR GENERAL, AS AGENT. Rates on copper and other metals from Anaconda and Black Eagle, Mont., to Rome, N. Y., via lake and rail. *W. Nichols* and *E. H. Lang* for complainant. *L. O. Evans, J. F. Finerty, L. Mayer, F. G. Dorety, R. J. Hagman, C. Brown,* and *O. W. Dynes* for defendants. Dismissed on request of complainant, Dec. 5, 1921.

12417. EMPIRE REFINERIES *v.* DIRECTOR GENERAL, AS AGENT. Rates on gasoline from Ponca City, Okla., to points in Pennsylvania. *A. C. Holmes* for complainant. *C. Brown, M. M. Joyce, D. Evans, A. Dodson, H. W. Bicklé, T. J. Norton, F. E. Andrews, W. G. Story, J. F. Finerty, W. J. Larrabee,* and *W. F. Kinter* for defendants. Complaint satisfied. Dismissed Dec. 5, 1921.

12463. MONSANTO CHEMICAL WORKS *v.* DIRECTOR GENERAL, AS AGENT. Rates on imported tea waste from New York, N. Y., to St. Louis, Mo. *T. Bond* for complainant. *C. R. Webber, C. Brown, J. F. Finerty, N. S. Brown,* and *R. W. Barrett* for defendants. Dismissed on request of complainant, Oct. 31, 1921.

12464. MONSANTO CHEMICAL WORKS *v.* DIRECTOR GENERAL, AS AGENT. Rates on imported tea waste from San Francisco, Calif., to St. Louis, Mo. *T. Bond* for complainant. *J. F. Finerty, T. J. Norton, F. E. Andrews,* and *N. S. Brown* for defendants. Dismissed on request of complainant, Oct. 31, 1921.

12476. ROGERS-BROWN IRON CO. *v.* DIRECTOR GENERAL, AS AGENT. Switching allowances at Buffalo, N. Y. *Slee, O'Brian & Hellings* for complainant. *N. S. Brown, J. F. Finerty, W. J. Stevenson, J. Stillwell, Havens, Mann, Strang & Whipple, Locke, Babcock, Spratt & Hollister, R. W. Barrett, W. J. Larrabee, F. C. Powell, J. W. Bills, C. Brown,* and *H. C. Martin* for defendants. Complaint satisfied. Dismissed Nov. 1, 1921.

12502. CHEVROLET MOTOR CO. OF ST. LOUIS *v.* DIRECTOR GENERAL, AS AGENT. Rates on axles with attachments from Flint, Mich., to St. Louis, Mo. *F. A. Gaynor* and *C. R. Scharff* for complainant. *P. McCollester* for defendants. Complaint satisfied. Dismissed Oct. 31, 1921.

12503. CHEVROLET MOTOR CO. OF NEW YORK *v.* DIRECTOR GENERAL, AS AGENT. Rates on axles with attachments from Flint, Mich., to Tarrytown, N. Y. *F. A. Gaynor* and *C. R. Scharff* for complainant. *P. McCollester* for defendants. Complaint satisfied. Dismissed Oct. 31, 1921.

12602. MANHATTAN ELECTRICAL SUPPLY CO. *v.* AM. RY. EXP. CO. Rates on one carload of armored copper cable from Economy, Pa., to Ravenna, Ohio. *N. D. Belnap* and *Borders, Walter, Burchmore & Collin* for complainants. *J. R. Phillips, jr.,* for defendants. Dismissed on request of complainant Dec. 5, 1921.

12615. HARMON & CO. *v.* N. P. RY. CO. Ratings on rugs from Tacoma, Seattle, and Spokane, Wash., and Portland, Oreg., to nearby territory. *J. W. McCune* for complainant. *F. G. Dorety, R. J. Hagman, O. W. Dynes, J. N. Davis, H. A. Scandrett, G. H. Spencer, J. F. Reilly, Carey & Kerr, C. A. Hart, G. H. Smith, J. V. Lysle, T. J. Hammond, jr., D. F. Lyons, B. W. Scandrett, F. H. Wood, J. R. Bell, C. W. Durbrow,* and *E. Westlake* for defendants. Dismissed on request of complainant, Dec. 5, 1921.

12618. FEEDERS' SUPPLY CO. *v.* C., B. & Q. R. R. CO. Rates on cottonseed hull bran from East St. Louis, Ill., to Kansas City, Mo. *J. L. Whittington* for complainant. No appearances for defendants. Proceeding having been disposed of in Docket No. 9885, complaint dismissed Oct. 31, 1921.

12621. KAW RIVER SAND & MATERIAL CO. *v.* DIRECTOR GENERAL, AS AGENT. Rates on coal, hay, machinery, and various other articles to complainant's plant at Turner, Kans., from various points within a radius of 1,000 miles. *H. R. Lebrecht* for complainant. *R. S. Outlaw,* for defendants. Complaint satisfied. Dismissed Oct. 31, 1921.

12627. *HERCULES MOTOR MFG. Co. v. M. C. R. R. Co.* Rates on coke from Detroit, Mich., to Canton, Ohio. *Chamberlin & Fuller* for complainant. *C. Brown, M. R. Waite, J. Stillwell, and Squire, Sanders & Dempsey* for defendants. Dismissed on request of complainant, Oct. 31, 1921.

12652. *ATLAS PORTLAND CEMENT Co. v. C. R. R. Co. of N. J.* Rates on cement from Vevarro, Pa., to stations in New Jersey. *F. Lyon* for complainant. *A. Dodson, H. W. Bicklé, C. MacVeagh, C. S. Belsterling, A. H. Elder, R. W. Barrett, W. J. Larrabee, W. J. Turner, and M. B. Pierce* for defendants. Complaint satisfied. Dismissed Oct. 31, 1921.

12734. *SOUTHERN CLAY MFG. Co. v. DIRECTOR GENERAL, AS AGENT.* Rates on one carload of cement from Atlanta, Ga., to Enterprise, Ala. *R. L. Bunn* for complainant. *J. F. Finerty* for defendant. Transferred to Special Docket for adjustment, Nov. 28, 1921.

12747. *MERCHANTS & MFES. ASSO. OF BALTIMORE v. AM. RY. EXP. Co.* Through routes and joint rates on express traffic between Baltimore, Md., and points in the southeast. *A. E. Beck* for complainant. *R. S. French, S. McDaniel, W. N. McGehee, and C. J. Rixey* for interveners. *F. B. Harrison and H. S. Marx* for defendants. Dismissed on request of complainant, Nov. 1, 1921.

12755. *CENTRAL WISCONSIN SUPPLY Co. v. P., C., C. & ST. L. R. R. Co. ET AL.* Rates on one carload of red cedar shingles from New Westminster, B. C., to Minnesota Transfer, Minn., and diverted to Sweetser, Ind. *B. T. Bailey* for complainant. *M. M. Joyce, D. Evans, J. Stillwell, F. G. Dorety, R. J. Hagman, and C. Brown* for defendants. Dismissed on request of complainant, Nov. 1, 1921.

12763. *DU PONT DE NEMOURS & Co. v. DIRECTOR GENERAL, AS AGENT.* Rates on denatured alcohol in tank cars from Carney's Point, N. J., to Arlington, Pompton Lakes, and Parlin, N. J. *W. A. Simonton* for complainant. *J. F. Finerty* for defendants. Dismissed on request of complainant, Oct. 31, 1921.

12823. *MACON CHAMBER OF COMMERCE v. B. & A. R. R. Co.* Rates on paper from points in Maine, Massachusetts, and Vermont to Macon, Ga. *B. Gilham* for complainant. *W. N. McGehee* for defendants. Dismissed on request of complainant, Nov. 1, 1921.

12854. *DELAWARE, LACKAWANNA & WESTERN R. R. Co. v. DIRECTOR GENERAL.* Rates on coal from the anthracite coal field of Pennsylvania to Woodward-breaker, Pa. *W. J. Larrabee* for complainant. *J. F. Finerty* for defendant. Complaint satisfied. Dismissed Oct. 31, 1921.

12865. *GENERAL CHEMICAL Co. v. C. & A. R. R. Co.* Rates on fluorspar from Wagon Wheel Gap, Colo., to Newell, Fayette County, Pa. *G. H. Stevenson* for complainant. *J. G. McMurry, H. A. Scandrett, J. M. Souby, H. G. Herbel, J. M. Chaney, Winston, Strawn & Shaw, F. C. Powell, and J. Stillwell* for defendants. Dismissed on request of complainant, Oct. 31, 1921.

12895. *MORTON SALT Co. v. B. & O. R. R. Co.* Rates on coal from West Virginia mines to Lake Erie ports for transshipment by boat to Port Huron and Ludington, Mich. *B. B. Cady* for complainant. *C. R. Webber, D. L. Younger, E. D. Hotchkiss, J. Stillwell, and J. W. Allison* for defendants. Complaint satisfied. Dismissed Nov. 1, 1921.

12902. *DELAWARE, LACKAWANNA & WESTERN R. R. Co. v. DIRECTOR GENERAL, AS AGENT.* Rates on steel rails from Scranton, Pa., to points in the northern anthracite coal fields of Pennsylvania. *W. J. Larrabee* for complainant. *J. F. Finerty* for defendant. Complaint satisfied. Dismissed Oct. 31, 1921.

12926. *BOOTH-KELLY LUMBER Co. v. DIRECTOR GENERAL, AS AGENT.* Demurrage at Wendling, Oreg. *W. C. McCulloch and R. MacVeagh* for com-

plainant. *F. H. Wood, J. R. Bell, C. W. Durbrow, E. Westlake and J. F. Finerty* for defendants. Complaint satisfied. Dismissed Oct. 31, 1921.

12952. *CAPE GIRARDEAU CHAMBER OF COMMERCE v. C. & E. I. R. R. Co. ET AL.* Class and commodity rates between Cape Girardeau, Mo., and Thebes, Ill. *W. F. Bergmann* for complainant. *H. G. Herbel, J. M. Chaney, K. L. Richmond and M. G. Roberts* for defendants. Dismissed on request of complainant, Dec. 5, 1921.

12970. *CHARLESTON TRAFFIC BUREAU v. A. C. L. R. R. Co. ET AL.* Rating on chocolate flavoring syrup in metal cans, barrels or boxes in southern classification territory. *T. J. Burk* for complainant. *W. D. Cook, A. P. Humburg, D. L. Younger, W. A. Northcutt, H. G. Herbel, J. M. Chaney, M. G. Roberts, J. L. Hawley, J. F. Dalton, C. J. Rixey, J. C. Rich, and H. Thurtell* for defendants. Dismissed on request of complainant, Oct. 31, 1921.

13004. *GRAIN BELT MILLS Co. v. A., T. & S. F. Ry. Co. ET AL.* Rates on alfalfa meal from points in Colorado to South St. Joseph, Mo. *A. T. West* for complainant. *H. A. Scandrett, J. M. Souby, T. J. Norton, F. E. Andrews, K. F. Burgess, and R. A. Brown* for defendants. Dismissed on request of complainant, Dec. 5, 1921.

13007. *BELL Co. v. AM. RY. EXP. Co.* Rates on peaches by express from Burt and Wilson, N. Y., to Wilkes-Barre, Pa. *C. A. Rogers* for complainant. *A. W. Hartung* for defendant. Complaint satisfied. Dismissed Nov. 1, 1921.

13009. *THOMPSON-WELLS LUMBER Co. ET AL. v. C., M. & St. P. Ry. Co. ET AL.* Rates on logs from points in Michigan to other points in Michigan and Wisconsin. *E. L. Ewing* for complainants. *O. W. Dynes, J. N. Davis, and R. H. Widdicombe* for defendants. Dismissed on request of complainants, Dec. 5, 1921.

13019. *CENTRAL WISCONSIN SUPPLY Co. v. C., M. & St. P. Ry. Co. ET AL.* Rates on bituminous coal from Hymera, Ind., to Milwaukee, Wis., reconsigned to La Crosse, Wis. *B. T. Bailey* for complainant. *C. Brown, O. W. Dynes, and J. N. Davis* for defendants. Dismissed on request of complainant, Dec. 5, 1921.

13034. *CHICAGO FIRE BRICK Co. v. B. & O. R. R. Co. ET AL.* Minimum weight on sewer pipe and flue lining from Mecca, Ind., to points in Illinois, Indiana, Kentucky, Michigan, Ohio, Wisconsin and Minnesota. *F. C. Cull* for complainant. *C. W. Edmondson* for intervener. *E. P. Vernia, R. L. Kennedy, K. L. Richmond, R. H. Widdicombe, W. A. Eggers, J. Stillwell, O. W. Dynes, J. N. Davis, C. Brown, and N. S. Brown* for defendants. Dismissed on request of complainants, Dec. 5, 1921.

13035. *MONONGAHELA POWER & RY. Co. v. DIRECTOR GENERAL, AS AGENT.* Rates on bituminous coal from Baxter, W. Va., to Jayenne, W. Va. *A. J. Colborn and G. McDougal* for complainant. *J. F. Finerty* for defendant. Dismissed on request of complainant, Dec. 5, 1921.

13042. *MEYER-ALBERT GROCER Co. v. C. S. S. Co. ET AL.* Rates on canned tomatoes from Baltimore, Md., to Cape Girardeau, Mo. *G. L. Meyer and L. Bagby* for complainant. *M. G. Roberts, K. L. Richmond, E. D. Hotchkiss and C. J. Rixey* for defendants. Dismissed on request of complainant, Dec. 5, 1921.

13043. *MEYER-ALBERT GROCER Co. v. N. Y. C. R. R. Co. ET AL.* Rates on canned vegetables from Phelps, N. Y., to Cape Girardeau, Mo. *G. L. Meyer and L. Bagby* for complainant. *M. G. Roberts, K. L. Richmond, and C. Brown* for defendants. Dismissed on request of complainant, Dec. 5, 1921.

13044. *MEYER-ALBERT GROCER Co. v. G. T. W. Ry. Co. ET AL.* Rates on beans from Gagetown, Mich., to Cape Girardeau, Mo. *G. L. Meyer and L. Bagby* for complainant. *M. G. Roberts, K. L. Richmond, and R. L. Burnap* for defendants. Dismissed on request of complainant, Dec. 5, 1921.

13084. STANDARD OIL CO. (N. J.) *v.* DIRECTOR GENERAL, AS AGENT. Rates on petroleum products from Wilmington, N. C., to Greensboro, Madison, Mount Airy, Rural Hill, and Siler City, N. C. *G. H. Turner* for complainant. *J. F. Finerty* for defendant. Dismissed on request of complainant, Dec. 5, 1921.

13116. CENTRAL WISCONSIN SUPPLY CO. *v.* C., T. H. & S. E. RY. CO. ET AL. Rates on one carload of coal from Latta, Ind., to Chicago, Ill., reconsigned to Corliss, Wis. *B. T. Bailey* for complainant. *J. N. Davis* and *C. Brown* for defendants. Dismissed on request of complainants, Dec. 5, 1921.

13153. KING POWDER CO. *v.* DIRECTOR GENERAL, AS AGENT. Rates on powder from Middletown Junction, Ohio, to Kentucky, Ohio, and West Virginia. *F. M. Renshaw* for complainant. No appearances for defendants. Dismissed on request of complainant, Nov. 1, 1921.

13170. DEMPSEY GROCER CO. *v.* A., T. & S. F. RY. CO. ET AL. Rates on potatoes from Minnesota and North Dakota to Cape Girardeau, Mo. *A. R. Zoelsman* for complainant. *A. H. Lossow, M. G. Roberts, C. S. Burg, P. B. Warren, K. L. Richmond, R. L. Kennedy, F. G. Dorety, R. J. Hagman, R. H. Widdicombe, K. F. Burgess, D. Upthegrove, J. R. Turney, A. H. Kiskaddon, H. G. Herbel, J. M. Chaney, D. F. Lyons, B. W. Scandrett, C. J. Rixey, O. W. Dynes, J. N. Davis, T. J. Norton, F. E. Andrews, M. M. Joyce, D. Evans, A. P. Humburg, and A. B. Enoch* for defendants. Dismissed on request of complainant, Dec. 5, 1921.

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9436. ALABAMA-GEORGIA SYRUP Co. *v.* L. & N. R. R. Co. December 5, 1921. Reparation for \$151.64, on shipments of molasses and syrup from New Orleans, Harvey, and Terre Haute, La., to Montgomery, Ala., on account of unreasonable charges.

9842. WESTERN PACIFIC R. R. Co. *v.* S. P. Co. November 1, 1921. Reparation for \$15,948.20, on account of an unlawful basis of divisions of joint through passenger fares between points in the state of California and Salt Lake City, Utah, and points north and east thereof.

10228. LION COAL Co. *v.* UTAH RY. Co. November 1, 1921. Reparation for \$9.661, on shipments of coal from complainant's mine to various intrastate and interstate destinations, on account of unreasonable charges.

10450. HANOVER CREAMERY Co. *v.* DIRECTOR GENERAL. December 5, 1921. Reparation for \$796.75, on shipments of condensed skimmed milk from Hanover, Pa., to Jacksonville, Fla., on account of unreasonable tariff provision.

10470. CANNON MFG. Co. *v.* S. RY. Co. November 1, 1921. Reparation for \$281.77, on shipments of tobacco shade cloth from Concord, N. C., to points in Connecticut, on account of unreasonable rate.

10577. BENNETT GRAIN Co. *v.* DIRECTOR GENERAL. November 1, 1921. Reparation for \$280.29, on shipments of coal from Benton and Ziegler, Ill., to points in South Dakota and Minnesota, reconsigned en route to other points in those states, on account of unreasonable charges.

10653. HELENA TRAFFIC BUREAU *v.* DIRECTOR GENERAL. November 1, 1921. Reparation for \$783.47, on shipments of horses and mules from Springfield and Lockwood, Mo., and Belleville, Kans., to Helena, Ark., on account of unreasonable rate.

10693 (Sub-No. 4). LAKEWOOD ENGINEERING Co. *v.* DIRECTOR GENERAL. November 1, 1921. Reparation for \$418.28, on shipments of steel rails and cross ties from Cleveland, Ohio, to Baltimore, Md., on account of unreasonable rate.

10774. FERRELL & Co. *v.* C. & N. W. RY. Co. December 5, 1921. Reparation for \$681.69, on shipments of potatoes from Minnesota and Wisconsin points to Dumesnil, Ky., on account of unreasonable rate.

10829. SOUTHPORT MILL *v.* DIRECTOR GENERAL. December 5, 1921. Reparation for \$23,486.57, on shipments of imported copra from the Pacific coast to New Orleans and Baton Rouge, La., on account of unreasonable rate.

10882. RYAN FRUIT Co. *v.* S. P. Co. November 1, 1921. Reparation for \$10,496.96, on shipments of deciduous and citrus fruits from certain points in California to Salt Lake City and Ogden, Utah, on account of unreasonable rate.

10928. ATLANTIC PAPER & PULP CORP. *v.* DIRECTOR GENERAL. November 1, 1921. Reparation for \$9,127.72, on shipments of wood pulp from Port Wentworth, Ga., to Bogalusa, La., on account of an unreasonable rate.

10941. TEXAS COTTONSEED CRUSHERS' ASSO. *v.* DIRECTOR GENERAL. November 1, 1921. Reparation for \$4,191.98, on shipments of copra from Seattle and Tacoma, Wash., to Dallas, Tex. on account of unreasonable rate.

11018. WICHITA BOARD OF COMMERCE *v.* DIRECTOR GENERAL. November 1, 1921. Reparation for \$5,535.40, on shipments of horses and mules from Wichita, Kans., to North Fort Worth, Tex., on account of unreasonable rate.

11121. BIRDSBORO STONE CO. *v.* P. R. R. CO. December 5, 1921. Reparation for \$4,310.75, on shipments of crushed stone from Monocacy, Pa., to destinations in the states of Pennsylvania, Maryland, Delaware, and New Jersey on account of unreasonable rate.

11134. JONES & LAUGHLIN STEEL CO. *v.* DIRECTOR GENERAL. November 1, 1921. Reparation for \$4,393.97, on shipments of gravel and sand to and from the plant of the intervener at West Economy, Pa., on account of unreasonable and unduly prejudicial rate.

11161. ILLIFF-BRUFF CHEMICAL CO. *v.* DIRECTOR GENERAL. November 1, 1921. Reparation for \$2,278.87, on shipments of sulphuric acid from Danville, Ill., to Hoopeston, Ill., on account of unreasonable rate.

11171. JOHNS-MANVILLE CO. *v.* DIRECTOR GENERAL. November 1, 1921. Reparation for \$3,609.10, on shipments of liquid asphalt from Mereaux, La., to Milwaukee, Wis., on account of unreasonable rate.

11199. MARBLE CLIFF QUARRIES CO. *v.* DIRECTOR GENERAL. December 5, 1921. Reparation for \$565, on switching shipments of crushed stone between complainant's plants near Marble Cliff, Ohio, on account of unreasonable rate.

11225. LAWTON REFINING CO. *v.* DIRECTOR GENERAL. November 28, 1921. Reparation for \$4,282.08, on shipments of crude petroleum from Junction City, Okla., to Lawton, Okla., on account of unreasonable rate.

11243. BOLDT GLASS CO. *v.* DIRECTOR GENERAL. December 5, 1921. Reparation for \$306.93, on shipments of glass bottles from Huntington, W. Va., to Frankfort, Ky., on account of unreasonable rate.

11252. VIRGINIA-CAROLINA CHEMICAL CO. *v.* DIRECTOR GENERAL. November 1, 1921. Reparation for \$2,311.42, on shipments of sulphuric acid from Charlotte, N. C., to Greenville, S. C., and Selma, N. C., on account of unreasonable rate.

11269. ILLINOIS STEEL CO. *v.* DIRECTOR GENERAL. November 1, 1921. Reparation for \$59,320.32, on shipments of coke from coke ovens to various points within the area of complainant's plant at Gary, Ind., on account of unreasonable rate.

11281. WAUSAU BOX & LUMBER CO. *v.* DIRECTOR GENERAL. November 1, 1921. Reparation for \$234.96, on shipments of shavings and sawmill refuse from Wausau, Wis., to Brokaw and Rothschild, Wis., on account of unreasonable charges.

11292. PARKERSBURG RIG & REEL CO. *v.* DIRECTOR GENERAL. November 1, 1921. Reparation for \$1,575.25, on shipments of nails with oil-well outfits and supplies from Parkersburg, W. Va., to certain points in Texas, on account of unreasonable rate.

11305, 11307, 11307 (Sub-No. 1), 11307 (Sub-No. 2), and 11308. ANDERSON & CO. *v.* DIRECTOR GENERAL; Grace & Co. *v.* Director General; China Agency & Trading Co. *v.* Director General; and Oriental Products Co. *v.* Director General. November 1, 1921. Reparation for \$4,534.61, on shipments of iron and steel articles from points in Illinois and Pennsylvania to San Francisco, Calif., and Seattle, Wash., on account of unreasonable charges.

11330. MINNESOTA & ONTARIO PAPER CO. *v.* DIRECTOR GENERAL. November 1, 1921. Reparation for \$2,296.72, on shipments of salt cake from Newell, Pa., and Hegewisch and West Hammond, Ill., to International Falls, Minn., on account of unreasonable rate.

11332. NEWTON OIL MILL *v.* DIRECTOR GENERAL. November 1, 1921. Reparation for \$1,295.23, on shipments of cotton seed from various points in Louisiana to Newton, Miss., on account of unreasonable rate.

11334. TARVER, STEELE & Co. *v.* DIRECTOR GENERAL. November 1, 1921. Reparation for \$1,681.73, on shipments of cotton from Bradley, Buckner, and Waldo, Ark., to Galveston, Tex., on account of unreasonable charges.

11349. EMPIRE COTTON OIL Co. *v.* DIRECTOR GENERAL. December 5, 1921. Reparation for \$1,547.70, on shipments of cotton seed from Henderson, N. C., to Dublin, Ga., on account of unreasonable rate.

11397 and 10857. McDONALD CHOCOLATE Co. *v.* C. OF GA. RY. Co.; McDonald Chocolate Co. *v.* Director General. November 1, 1921. Reparation for \$3,103.05, on shipments of cocoa butter from New York and Brooklyn, N. Y., and Philadelphia, Pa., to Salt Lake City, Utah, on account of unreasonable rate.

11404. SWIFT & Co. *v.* DIRECTOR GENERAL. December 5, 1921. Reparation for \$285.41, on shipments of stable manure from Camp Sherman, Ohio, to Parma, Ohio, on account of unreasonable rate.

11432. FULLER Co. *v.* DIRECTOR GENERAL. November 1, 1921. Reparation for \$889.49, on shipments of boat rudders from Wheeling, W. Va., to Wilmington, N. C., on account of unreasonable rate.

11436. ROWLAND-POWER CONSOLIDATED COLLIERIES Co. *v.* DIRECTOR GENERAL. November 1, 1921. Reparation for \$2,427.20, on shipments of water from Howesville, Ind., to complainant's mines near Midland, Ind., on account of unreasonable charges.

11439. SWIFT & Co. *v.* DIRECTOR GENERAL. November 1, 1921. Reparation for \$9,369.79, on shipments of solidified soya-bean and peanut oil from Atlanta, Ga., to various interstate destinations, on account of unreasonable rate.

11443. SHREVEPORT PRODUCING & REFINING CORP. *v.* DIRECTOR GENERAL. November 1, 1921. Reparation for \$2,012.08, on shipments of gravel from Benton, Ark., to Shreveport, La., on account of unreasonable rate.

11456. VULCAN DETINNING Co. *v.* DIRECTOR GENERAL. December 5, 1921. Reparation for \$1,311.38, on shipments of scrap tin plate from Oconomowoc, Wis., to Streator, Ill., on account of unreasonable rate.

11514. DAVIS MFG. Co. *v.* DIRECTOR GENERAL. November 1, 1921. Reparation for \$841.99, on shipments of epsom salts from Atlanta, Ga., to Knoxville, Tenn., on account of unreasonable rate.

11518. CENTURY GLASS SAND Co. *v.* DIRECTOR GENERAL. November 1, 1921. Reparation for \$530.87, on shipments of silica sand from Imperial, W. Va., to Pennsboro, W. Va., on account of unreasonable rate.

11554. FOSTER LUMBER Co. *v.* DIRECTOR GENERAL. December 5, 1921. Reparation for \$981.77, on shipments of coal from Walsenburg, Colo., to Billings, Okla., on account of unreasonable rate.

11572. BIRDSBORO STONE Co. *v.* P. R. R. Co. December 5, 1921. Reparation for \$480.19, on shipments of crushed stone from Monocacy, Pa., to destinations in Pennsylvania, on account of unreasonable rate.

11593. DICKEY *v.* DIRECTOR GENERAL. December 5, 1921. Reparation for \$965.28, on shipments of clay from Dickey Clay Spur, Mo., to Deepwater, Mo., on account of unreasonable charges.

11652. GALENA SIGNAL OIL Co. *v.* DIRECTOR GENERAL. November 1, 1921. Reparation for \$733.34, on shipments of sulphuric acid from Denver, Colo., to Galena, Tex., on account of unreasonable rate.

11696. WEIR SMELTING Co. *v.* DIRECTOR GENERAL. December 5, 1921. Reparation for \$524.67, on shipments of coal from Deering, Kans., to Caney, Kans., on account of unreasonable rate.

11736. LEHIGH & WILKES-BARRE COAL CO. *v.* DIRECTOR GENERAL. November 1, 1921. Reparation for \$605.72, on shipments of mine props from points in Maryland and Virginia to Plymouth, Pa., on account of unreasonable rate.

11743. PENN SEABOARD STEEL CORP. *v.* DIRECTOR GENERAL. December 5, 1921. Reparation for \$5,523.77, on shipments of pig iron from Harrisburg, Pa., to New Castle, Del., on account of unreasonable rate.

11751. WEST *v.* St. L.-S. F. Ry. Co. December 5, 1921. Reparation for \$520.31, on shipments of apples from Westville, Okla., to Fayetteville, Ark., on account of unreasonable rate.

11811. PEORIA CORDAGE CO. *v.* DIRECTOR GENERAL. November 1, 1921. Reparation for \$6,785.65, on shipments of istle fiber from Laredo and Eagle Pass, Tex., to Peoria, Ill., on account of unreasonable rate.

11993 and 11993 (Sub-No. 1). BIRMINGHAM RAIL & LOCOMOTIVE CO. *v.* DIRECTOR GENERAL. December 5, 1921. Reparation for \$568.78, on shipments of steel rails from Cannons and Coosawatchie, S. C., to North Birmingham, Ala., on account of unreasonable rate.

NOTE.—The amount of reparation awarded in the above cases aggregates \$214,847.10.

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ORDERS ISSUED INVOLVING REPARATION IN INFORMAL PLEADINGS FOR THE YEAR ENDED OCTOBER 31, 1921.

For the year ended October 31, 1921, the number of orders issued involving reparation in informal pleadings was 1,289; the number of claims denied or otherwise closed during that period was 211; and the amount of reparation awarded was \$798,278.23.

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Sault Ste. Marie and Fort Frances, Ontario, and Minnesota, Wisconsin, and Michigan to the west and southwest, 33.

PAPER, ROOFING. Portland, Oreg., to and from Seattle, Wash., 159 (163).

PAPER, SCRAP:

Iowa and Minnesota to Chicago and Peoria, Ill., and St. Louis, Mo., and points taking same rates, 607.

Mason City, Iowa, to Mississippi River crossings, destined to points east of Illinois-Indiana state line, 607.

PAPER, WRAPPING:

Portland, Oreg., to and from Seattle, Wash., 159 (163).

St. Louis, Mo., to southeastern and Mississippi Valley territories, 306.

PAPER, WRITING. Ladysmith, Wis., Kalamazoo, Mich., and Hamilton and Urbana, Ohio, to Vancouver, B. C., and Tacoma, Wash., for export, 186.

PEANUTS. Greenwood, Fla., to Bainbridge, Ga., 71.

PEANUTS, SHELLED AND UNSHELLED. Portland, Oreg., to and from Seattle, Wash., 159 (163).

PEARS. Eastern and western groups. Storage in transit, 627.

PEAS, GREEN. Texas to Hastings and Grand Island, Nebr., 748.

PEBBLES, FLINT. New York, N. Y., to Ottawa, Wedron, Millington, and Oregon, Ill. Imported, 302.

PEPPERS, GREEN. Texas to Hastings and Grand Island, Nebr., 748.

PETROLEUM:

Franklin, Pa., to intrastate destinations, 61.

St. Louis, Mo., to southeastern and Mississippi Valley territories, 306.

PETROLEUM, CRUDE:

Beattyville, Ky., to Findlay, Ohio, 704.

Iowa Park, Tex., to New Orleans, La., 289.

PETROLEUM PRODUCTS:

Midcontinent oil field, Kans.-Okla., to Alton, Iowa, Beresford, S. Dak., and Pipestone, Minn., 178.

Missouri. Increase in rates, 233.

St. Louis, Mo., to southeastern and Mississippi Valley territories, 306.

PICKLES. Portland, Oreg., to and from Washington, 159 (165).

PINS, BULL-WHEEL, WOODEN. Parkersburg, W. Va., to Kansas, Oklahoma, Texas, and Louisiana, 568.

PIPE. Scottsville, Tex., to Mansfield, La., 665.

PIPE, CAST-IRON. Montana from Chattanooga, Tenn., and Alabama, 638.

PIPE, IRON. Portland, Oreg., to and from Washington, 159 (163).

PIPE, SEWER:

St. Louis, Mo., to southeastern and Mississippi Valley territories, 306.

Vancouver and New Westminster, B. C., to Seattle, Wash., 159 (165).

PIPE, STEEL. Portland, Oreg., to and from Washington, 159 (163).

PIPE, WROUGHT-IRON. Chester, Pa., to Lawton, Okla., 78.

PITCH, ROOFING. Portland, Oreg., to Bacus, Stillwater, Carnation, and Woodruff, Wash., 159 (165).

PLANKS, HICKORY. Memphis, Tenn., and Cairo, Ill., from Illinois, Kentucky, Tennessee, Mississippi, Alabama, and Louisiana, 744.

PLASTER:

Missouri. Increase in rates, 233.

Portland, Oreg., to Bacus, Stillwater, Carnation, and Woodruff, Wash., 159 (165).

PLASTER, CEMENT. Missouri. Increase in rates, 233.

PLASTER, WALL:

Johnson City, Tenn., from Ohio and Mississippi river crossings, central and Buffalo-Pittsburgh territories, and Memphis and Nashville, Tenn., 709.

St. Louis, Mo., to southeastern and Mississippi Valley territories, 306.

PLATE, TIN. Portland, Oreg., to and from Seattle, Wash., 159 (163).

POLES, WHITE CEDAR. Mizpah, Minn., to Albion, Iowa, 145.

POTATOES. St. Louis, Mo., to southeastern and Mississippi Valley territories, 306.

POWDER, SOAP. St. Louis, Mo., to southeastern and Mississippi Valley territories, 306.

PULP, DRIED BEET. Western trunk line territory, 613.

PULP, WOOD. Newport News, Va., to Big Island, Va. Imported, 219.

RAGS:

Iowa and Minnesota to Chicago and Peoria, Ill., and St. Louis, Mo., and points taking same rates, 607.

Mason City, Iowa, to Mississippi River crossings, destined to points east of Illinois-Indiana state line, 607.

RAILS, IRON:

Johnson City, Tenn., from Ohio and Mississippi river crossings, central and Buffalo-Pittsburgh territories, and Memphis and Nashville, Tenn., 709.

Portland, Oreg., to and from Bay City, Wash., 159 (165).

RAILS, STEEL:

Johnson City, Tenn., from Ohio and Mississippi river crossings, central and Buffalo-Pittsburgh territories, and Memphis and Nashville, Tenn., 709.

Portland, Oreg., to and from Bay City, Wash., 159 (165).

RANGES. St. Louis, Mo., to southeastern and Mississippi Valley territories, 306.

RICE. Washington to and from Oregon and Vancouver, B. C., 159 (163).

ROCK, CRUSHED. Missouri. Increase in rates, 233.

ROCK, GYPSUM, CRUSHED:

Gladys, Okla., to Cape Girardeau, Mo., 662.

Grand Rapids, Mich., to Hannibal and Prospect Hill, Mo., 662.

ROCK, LIME. Flint, Calif., to Tolenas, Calif., 507.

ROOFING, COMPOSITION AND PREPARED. St. Louis, Mo., to southeastern and Mississippi Valley territories, 306.

ROPE, OLD:

Iowa and Minnesota to Chicago and Peoria, Ill., and St. Louis, Mo., and . points taking some rates, 607.

Mason City, Iowa, to Mississippi River crossings, destined to points east of Illinois-Indiana state line, 607.

RYE. Minnesota, North Dakota, South Dakota, Iowa, Nebraska, and Kansas to Washington, Oregon, Montana, Idaho, and Canada, 461.

SALT:

Johnson City, Tenn., from Ohio and Mississippi river crossings, central and Buffalo-Pittsburgh territories, and Memphis and Nashville, Tenn., 709.

Retsof, Watkins, Ithaca, and Ludlowville, N. Y., to Carney's Points, Gibbstown, and Paulsboro, N. J., 14.

St. Louis, Mo., to southeastern and Mississippi Valley territories, 306.

SAND:

Fort Gibson, Okla., to Joplin, Webb City, and Springfield, Mo., and Pittsburgh, Independence, and Iola, Kans., 601.

Hamilton, Ohio. Demurrage, 439.

Hart Spur, Tex., to Fort Worth, Tex., 248.

Illinois and Wisconsin to Chicago switching district, 37.

Indianapolis, Ind. Switching, 457.

Memphis, Tenn. Switching, 243.

Michigan City, Ind., to Johnstown-Connellsville territory, 512.

Missouri. Increase in rates, 233.

SASH. Washington to and from Oregon and Vancouver, B. C., 159 (164).

SEED, CANE, SORGHAM, SUDAN-GRASS, AND WILD-MUSTARD. Western trunk line territory, 613.

SEED, WHITE-CLOVER. Omaha, Nebr., from Gilby, Grand Forks, and Michigan, N. Dak., 75.

SHAFTS, BULL-WHEEL AND CALF-WHEEL, STEEL. Parkersburg, W. Va., to Eastland and Ranger, Tex., 154.

SHEEP. San Francisco, Calif., and bay points from Idaho, Oregon, Nevada, and California, 647.

SHINGLES, CEDAR. Oregon, Washington, and British Columbia to various points in the United States and Canada, 548.

SHOOKS, BOX. Virginia, North Carolina, and South Carolina to New York, New Jersey, Pennsylvania, and other eastern states, 389.

SIRUP:

St. Louis, Mo., to southeastern and Mississippi Valley territories, 306.

Washington to and from Oregon and Vancouver, B. C., 159 (163).

SIRUP, CORN. St. Louis, Mo., to southeastern and Mississippi Valley territories, 306.

SLABS, COPPER. Laurel Hill (Nihcols siding), N. Y. Refining-in-transit arrangements, 257.

SLATE. St. Louis, Mo., to southeastern and Mississippi Valley territories, 306.

SOAP. St. Louis, Mo., to southeastern and Mississippi Valley territories, 306.

SODA ASH. Painesville, Ohio, to Seattle, Wash., for export, 599.

SODA, BICARBONATE, CAUSTIC, SAL, AND SILICATE OF. St. Louis, Mo., to southeastern and Mississippi Valley territories, 306.

SPALLS, MARBLE. Knoxville, Tenn., from nearby quarries, 67.

SPEEDOMETER HEADS. Chicago, Ill., to San Diego, Los Angeles, Oakland, and San Francisco, Calif., Portland, Oreg., and Seattle, Wash. Ratings, 541.

SPEEDOMETERS. Chicago, Ill., to San Diego, Los Angeles, Oakland, and San Francisco, Calif., Portland, Oreg., and Seattle, Wash. Ratings, 541.

SPELTZ. Minnesota, North Dakota, South Dakota, Iowa, Nebraska, and Kansas to Washington, Oregon, Montana, Idaho, and Canada, 461.

STARCH. St. Louis, Mo., to southeastern and Mississippi Valley territories, 306.

STEEL ARTICLES:

Pittsburgh, Pa. Terminal switching, 447.

Portland, Oreg., to and from Bay City, Wash., 159 (165).

St. Louis, Mo., to southeastern and Mississippi Valley territories, 306.

STEEL, BAR. Portland, Oreg., to and from Seattle, Wash., 159 (163).

STEEL, STRUCTURAL. Portland, Oreg., to and from Seattle, Wash., 159 (163).

STONE:

Missouri. Increase in rates, 233.

St. Louis, Mo., to southeastern and Mississippi Valley territories, 306.

STONE, DRESSED. St. Louis, Mo., to southeastern and Mississippi Valley territories, 306.

STONE, GROUND:

Bridgeport and Mascot, Tenn., to Louisville & Nashville stations, 515.

St. Louis, Mo., to southeastern and Mississippi Valley territories, 306.

STONE, POWDERED. Bridgeport and Mascot, Tenn., to Louisville & Nashville stations, 515.

STONE, ROUGH. St. Louis, Mo., to southeastern and Mississippi Valley territories, 306.

STONEWARE. Johnson City, Tenn., from Ohio and Mississippi river crossings, central and Buffalo-Pittsburgh territories, and Memphis and Nashville, Tenn., 709.

STOVES. St. Louis, Mo., to southeastern and Mississippi Valley territories, 306.

STRAWBERRIES:

Florida to various destinations. Estimated weights in pony refrigerators, 610.

Texas to Hastings and Grand Island, Nebr., 748.

STUCCO. Portland, Oreg., to Bacus, Stillwater, Carnation, and Woodruff, Wash., 159 (165).

SUGAR. Washington to and from Oregon and Vancouver, B. C., 159 (163).

SULPHATE OF AMMONIA. See AMMONIA, SULPHATE OF.

SULPHATE OF BARIUM. See BARIUM, SULPHATE OF.

TALLOW. Portland, Oreg., to and from Seattle, Wash., 159 (163).

TANKS, IRON:

Cushing, Okla., to Central City, Ohio, and Morgantown, W. Va., 444.

Minden, Franziers spur, Shreveport, and Gahagan, La., from Jenks and Morris, Okla., Ranger, Tex., and Elmwood Place and Ivorydale, Ohio, 532.

TANKS, STEEL. Minden, Franziers spur, Shreveport, and Gahagan, La., from Jenks and Morris, Okla., Ranger, Tex., and Elmwood Place and Ivorydale, Ohio, 532.

TAR, COAL. St. Louis, Mo., to southeastern and Mississippi Valley territories, 306.

TERRA COTTA. Vancouver and New Westminster, B. C., to Seattle, Wash., 159 (165).

TIES, COTTON. St. Louis, Mo., to southeastern and Mississippi Valley territories, 306.

TILE. Portland, Oreg., to Vader, Wash., 159 (165).

TILE, HOLLOW BUILDING. St. Louis, Mo., to southeastern and Mississippi Valley territories, 306.

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- TIN-CAN STOCK.** Portland, Oreg., to Everett, Wash., 159 (165).
- TOPS, HAIR AND WOOL.** Boston, Mass., from western and southwestern points, 365.
- TRACK MATERIAL, RAILWAY.** Johnson City, Tenn., from Ohio and Mississippi river crossings, central and Buffalo-Pittsburgh territories, and Memphis and Nashville, Tenn., 709.
- TRACTORS, GARDEN.** Rating, 1.
- TRUCKS, AUTOMOBILE.** New Orleans, La. Demurrage and storage charges, 588.
- TWINE.** Portland, Oreg., and Seattle and Tacoma, Wash., to Grays Harbor and Willapa Bay points, 159 (164).
- VEGETABLES :**
- St. Louis, Mo., to southeastern and Mississippi Valley territories, 306.
- Texas to Hastings and Grand Island, Nebr., 748.
- VEGETABLES, FRESH.** Indiana points within Chicago switching district, and Illinois from various points. Heater service, 283.
- VINEGAR.** Portland, Oreg., to and from Seattle, Wash., 159 (163).
- WAGONS, FARM.** St. Louis, Mo., to southeastern and Mississippi Valley territories, 306.
- WASTE, HAIR AND WOOL.** Boston, Mass., from western and southwestern points, 365.
- WAX, PARAFFIN.** North Baton Rouge, La., to Philadelphia, Pa., 702.
- WEIGHTS, SASH.** Portland, Oreg., to and from Seattle, Wash., 159 (163).
- WHEAT :**
- El Paso, Tex., and defined territorial groups, to Arizona and California, 452.
- Galveston, Tex., from Minneapolis, Minn., for export. Terminal charges, 629.
- Kansas to Salina, Kans., milled and reshipped as flour to New Orleans, La., and Galveston, Tex., for export, 226.
- WIRE.** Portland, Oreg., to and from Seattle, Wash., 159 (163).
- WOOL.** Boston, Mass., from western and southwestern points, 365.
- WOOL, CAMEL'S.** Boston, Mass., from western and southwestern points, 365.
- YARN, WOOLEN.** Skowhegan, Me., to Portland, Me., Sawyer, N. H., Boston and other points in Massachusetts, and New York, N. Y., 261.

TABLE OF LOCALITIES.

[The number in parentheses following citations indicate where locality is considered.]

-
- Aberdeen, Miss., from St. Louis, Mo. Commodity rates, 306.
- Aberdeen, Miss., from Virginia cities. Class rates, 107 (120).
- Ackerman, Miss., from St. Louis, Mo. Commodity rates, 306.
- Ackerman, Miss., from Virginia cities. Class rates, 107 (120).
- Ackley, Iowa, to Chicago and Peoria, Ill., and St. Louis, Mo., and points taking same rates. Scrap paper, rags, and old rope, 607.
- Akron, Ohio. Standard time, 281.
- Alabama to Memphis, Tenn., and Cairo, Ill. Hickory planks, billets, and flitches, 744.
- Alabama to Montana. Cast-iron pipe and pipe connections, 638.
- Alabama to Nashville, Tenn. Commodity rates, 306 (340).
- Alabama to New Jersey and other eastern states. Yellow-pine lumber, 694.
- Alabama to Norfolk & Western Ry. points. Lumber and products, 591.
- Alabama to and from North Carolina. Class rates, 264.
- Alabama to Selma, Ala. Lumber; joint rates, 563.
- Albany, N. Y., from Virginia, North Carolina, and South Carolina. Box shooks, 389.
- Albert Lea, Minn., to Chicago and Peoria, Ill., and St. Louis, Mo., and points taking same rates. Scrap paper, rags, and old rope, 607.
- Albion, Calif. Free time, 400.
- Albion, Iowa, from Mizpah, Minn. White cedar poles, 145.
- Algonquin, Ill., to Chicago switching district. Sand and gravel, 37.
- Alton, Fla., to Cordele, Ga. Cottonseed, 64.
- Alton, Iowa, from midcontinent oil field, Kans.-Okla. Petroleum products, 178.
- Altoona, Fla., to Cordele, Ga. Cottonseed, 64.
- Alvarado, Calif., from Halverm, Calif., for feeding. Livestock; unperformed out-of-line movement, 157.
- Anaconda, Mont., from Oregon and Washington. Newsprint paper, 557.
- Anaconda, Mont., to Rome, N. Y. Copper bars, 136.
- Appalachia district, Va., to Union, S. C. Bituminous coal, 633.
- Argo, Ill., from Ivorydale, Ohio. Barytes, 443.
- Arizona from Crestmore, Colton, Oro Grande, Victorville, and Riverside, Calif., and El Paso, Tex. Cement, 758.
- Arizona to and from El Paso and other Texas points. Class rates, 526.
- Arizona from Minneapolis, Minn., and Omaha, Nebr. Barley flour, 81.
- Arizona to and from Nevada, New Mexico, and other states. Passenger fares, 253.
- Arkansas to Dallas, Tex. Vegetable oils, 213.
- Arkansas from Galveston, Tex., New Orleans, La., and other Gulf ports. Green and roasted coffee, 26.
- Arkansas from Sault Ste. Marie and Fort Frances, Ontario, and Minnesota, Michigan, and Wisconsin. Newsprint paper, 33.
- 64 I. C. C.

- Arno, Va., to Charleston Mining and Manufacturing Co., Fla. Coal, 553.
- Ashland, Ky., to Johnson City, Tenn. Class and commodity rates, 709.
- Astoria, Oreg., to and from Washington. Class and commodity rates, 159.
- Atlanta, Ga., to Norfolk & Western Ry. points. Lumber and products, 591.
- Atlanta, Kans., from Parkersburg, W. Va. Wooden bull-wheel arms, cants, and pins, 568.
- Attica, N. Y. Switching charges, 582.
- Auburn, Wash., to and from Oregon and Vancouver, B. C. Class and commodity rates, 159.
- Augusta, Kans., from Parkersburg, W. Va. Wooden bull-wheel arms, cants, and pins, 568.
- Avondale, La., from West Tulsa, Okla., for export, reforwarded to Gretna, La., for domestic use. Gasoline, 201.
- Babbitt, N. J., from Virginia, North Carolina, and South Carolina. Box shooks, 389.
- Bacus, Wash., from Portland, Oreg. Commodity rates, 159 (165).
- Bainbridge, Ga., from Greenwood, Fla. Peanuts, 71.
- Baker, Oreg., to San Francisco, Calif., and other bay points. Sheep, 647.
- Baker, Oreg., to South Chicago, Ill. Chrome iron ore, 297.
- Baltimore, Md., to Mississippi Valley territory and other points. Class rates, 107 (131).
- Bangor, Me., from Denmark, Wis. Canned condensed milk, 641.
- Barlow Pass, Wash., from Portland, Oreg. Commodity rates, 159 (165).
- Basic, Va., from Delaware, Lackawanna & Western R. R. points. High explosives, 10.
- Baton Rouge, La., to Cincinnati, Ohio. Liquid asphalt, 292.
- Baton Rouge, La., from various points. Commodity rates, 306 (332).
- Baton Rouge, La., from Virginia cities. Class rates, 107 (120).
- Bay City, Wash., to and from Portland, Oreg. Commodity rates, 159 (165).
- Bayonne, N. J., from Virginia, North Carolina, and South Carolina. Box shooks, 389.
- Beattyville, Ky., to Findlay, Ohio. Crude petroleum, 704.
- Beaumont, Tex., from Parkersburg, W. Va. Wooden bull-wheel arms, cants, and pins, 568.
- Beebe, Wis., to Hayward, Wis., for manufacture and reshipment. Logs, 575.
- Belen, N. Mex., to and from El Paso, Tex. Class rates, 526.
- Belleville district, Ill., to Illinois, Indiana, Iowa, Minnesota, Wisconsin, Michigan, Nebraska, Kansas, North Dakota, South Dakota, and Missouri. Bituminous coal, 751.
- Bellingham, Wash., from Portland, Oreg. Commodity rates, 159 (165).
- Bemis, Mass., from Skowhegan, Me. Woolen yarn, 261.
- Bend, Oreg., to San Francisco, Calif., and other bay points. Sheep, 647.
- Benoit, Miss., from St. Louis, Mo. Commodity rates, 306.
- Beowawe, Nev., to San Francisco, Calif., and other bay points. Sheep, 647.
- Beresford, S. Dak., from midcontinent oil field, Kans.-Okla. Petroleum products, 178.
- Bernardsville, N. J., from Alabama. Yellow-pine lumber, 694.
- Bernice, Ill., to Chicago switching district. Brick, 273.
- Big Island, Va., from Newport News, Va. Wood pulp, 219.
- Billings, Mont., from Oregon and Washington. Newsprint paper, 557.
- Billings, Okla., from Parkersburg, W. Va. Wooden bull-wheel arms, cants, and pins, 568.
- Birmingham, Ala., to Memphis, Tenn. Stock cattle, 593.

- Black Eagle, Mont., to Rome, N. Y. Copper bars, 136.
- Blackwell, Okla., from Parkersburg, W. Va. Wooden bull-wheel arms, cants, and pins, 568.
- Blairsville, Pa., from Michigan City, Ind. Sand and gravel, 512.
- Bluefield, W. Va., from Delaware, Lackawanna & Western R. R. points. High explosives, 10.
- Blue Island, Ill., from Illinois and Indiana. Brick, 273.
- Boston, Mass., from Hudson, N. Y. Cement, 21.
- Boston, Mass., to Mississippi Valley territory and other points. Class rates, 107 (131).
- Boston, Mass., from Skowhegan, Me. Woolen yarn, 261.
- Boston, Mass., to southeastern and Mississippi Valley territories. Commodity rates, 306 (341).
- Boston, Mass., from western and southwestern points. Wool and hair, 365.
- Bowie, Ariz., from Crestmore, Colton, Oro Grande, Victorville, and Riverside, Calif., and El Paso, Tex. Cement, 758.
- Bowling Green, Ky., from Cabin Creek Junction, W. Va. Petroleum refined oil, 688.
- Boyne Falls, Mich., to Cadillac, Mich. Logs, 229.
- Branford, Fla., to Cordele, Ga. Cottonseed, 64.
- Branford, Fla., to Memphis, Tenn. Stock cattle, 593.
- Brawley, Calif., from Lone Pine, Calif. Feeder cattle, 221.
- Bridgeport, Tenn., to Louisville & Nashville stations. Ground and powdered stone, 515.
- British Columbia to Douglas, Ariz. Class and commodity rates, 405.
- British Columbia to various points in United States and Canada. Cedar shingles, 548.
- Brookhaven, Miss., from St. Louis, Mo. Commodity rates, 306.
- Brookhaven, Miss., from Virginia cities. Class rates, 107 (120).
- Brownsville, Pa., from Michigan City, Ind. Sand and gravel, 512.
- Buckley Pit (Wilmot spur), Wis., to Chicago switching district. Sand and gravel, 37.
- Buffalo-Pittsburgh territory to Johnson City, Tenn. Class and commodity rates, 709.
- Buffalo, Wyo., from Idaho, Montana, and Washington. Lumber and products, 485.
- Buffalo, Wyo., from Sheridan, Wyo. Brick, 485.
- Burkburnett, Tex., to Export Oil Spur, La., for export. Fuel oil, 175.
- Burns, Kans., from Parkersburg, W. Va. Wooden bull-wheel arms, cants, and pins, 568.
- Butte, Mont., from Oregon and Washington. Newsprint paper, 557.
- Cabin Creek Junction, W. Va., to Bowling Green, Ky. Petroleum refined oil, 688.
- Caddo, La., from Parkersburg, W. Va. Wooden bull-wheel arms, cants, and pins, 568.
- Cadillac, Mich., from Boyne Falls, Mich. Logs, 229.
- Cairo, Ill., from Illinois, Kentucky, Tennessee, Mississippi, Alabama, and Louisiana. Hickory planks, billets, and flitches, 744.
- Cairo, Ill., to Johnson City, Tenn. Class and commodity rates, 709.
- Cairo, Ill., to southeastern and Mississippi Valley territories. Commodity rates, 306 (337).
- Cairo, Ill., from Winfield and Viola, Kans., milled in transit at Wichita, Kans. Alfalfa meal, 189.
- 64 I. C. C.

- California to Douglas, Ariz. Class and commodity rates, 405.
 California from Minneapolis, Minn., and Omaha, Nebr. Barley flour, 81.
 California to Oakland. Live stock, 157.
 California to San Francisco, Calif., and other bay points. Sheep, 647.
 California ports. Free time, 400.
 Calipatria, Calif., from Lone Pine, Calif. Feeder cattle, 221.
 Camp Logan, Tex., to Chicago, Ill. Gas masks, 181.
 Canada from Minnesota, North Dakota, South Dakota, Iowa, Nebraska, and Kansas. Coarse grain, 461.
 Canada from Oregon, Washington, and British Columbia. Cedar shingles, 548.
 Canandaigua, N. Y., from North Tonawanda, N. Y. Lumber, 530.
 Cantine, Ill., to Rose Hill and Jefferson Park, Ill. Lump coal, 73.
 Cape Girardeau, Mo., from Gladys, Okla. Crushed gypsum rock, 662.
 Carey, Ohio. Standard time, 281.
 Carnation, Wash., from Portland, Oreg. Commodity rates, 159 (165).
 Carney's Point, N. J., to Hopewell, Va. Zinc-lined wooden boxes, 170.
 Carney's Point, N. J., from Retsof, Watkins, Ithaca, and Ludlowville, N. Y. Salt, 14.
 Carolina territory to and from Mississippi Valley territory and other points. Class rates, 107.
 Carpentersville, Ill., to Chicago switching district. Sand and gravel, 37.
 Carrel street station, Cincinnati, Ohio, to Newport and Latonia, Ky. Glass bottles, 619.
 Carrollville, Wis., from Wauwatosa, Wis. Glue stock, 17.
 Carson City, Nev., to San Francisco, Calif., and other bay points. Sheep, 647.
 Central City, Ohio, from Cushing, Okla. Iron tanks, 444.
 Central territory to Johnson City, Tenn. Class and commodity rates, 709.
 Charleston, Mo., from Memphis, Tenn. Corn meal, 671.
 Charleston Mining and Manufacturing Co., Fla., from Virginia and Kentucky. Coal, 553.
 Chattanooga, Tenn. Lumber; demurrage, 694.
 Chattanooga, Tenn., from Alabama. Yellow-pine lumber, 694.
 Chattanooga, Tenn., to Montana. Cast-iron pipe and pipe connections, 638.
 Cheboygan, Mich., from New York, N. Y., and Philadelphia, Pa. Myrobalans and bark extract, 437.
 Chester, Pa., to Lawton, Okla. Wrought-iron pipe, 78.
 Chicago, Ill. Switching charge and minimum weight, 500.
 Chicago, Ill., from Camp Logan, Tex. Gas masks, 181.
 Chicago, Ill., from Herrin, Ill. Coal, 555.
 Chicago, Ill., from Iowa and Minnesota. Scrap paper, rags, and old rope, 607.
 Chicago, Ill., to San Diego, Los Angeles, Oakland, and San Francisco, Calif., Portland, Oreg., and Seattle, Wash. Speedometers, speedometer heads, and speedometer connections; ratings, 541.
 Chicago, Ill., from Seattle, Wash. Antimony, 605.
 Chicago, Ill., from Seattle and Tacoma, Wash., and San Francisco, Calif. Straw braid and hemp braid, 429.
 Chicago, Ill., to southeastern and Mississippi Valley territories. Commodity rates, 306 (318).
 Chicago, Ill., from Streator, Ill. Brick and articles, 624.
 Chicago Heights, Ill., to Chicago switching district. Brick, 273.
 Chicago switching district from Illinois and Wisconsin. Sand and gravel, 37.
 Chicago switching district from points outside of that district. Brick, 273.
 Chiloquin, Oreg., to San Francisco, Calif., and other bay points. Sheep, 647.

- Cincinnati, Ohio, to Johnson City, Tenn. Class and commodity rates, 709.
- Cincinnati, Ohio, from Lexington, Ky. Gasoline and kerosene, 621.
- Cincinnati, Ohio, from Louisiana. Liquid asphalt, 292.
- Cincinnati, Ohio, to Newport and Latonia, Ky. Glass bottles, 619.
- Cincinnati, Ohio, to southeastern and Mississippi Valley territories. Commodity rates, 306 (321).
- Cincinnati, Ohio, from Sweetwater, Tenn. Sulphate of barium, 755.
- Cincinnati, Ohio (Carrel street station), to Newport and Latonia, Ky. Glass bottles, 619.
- Clarksdale, Miss., from St. Louis, Mo. Commodity rates, 306.
- Clay, Ky., to Clinton, Iowa. Coal, 151.
- Clinton, Iowa, from Clay, Ky. Coal, 151.
- Colby, Kans., to Salina, Kans., milled and reshipped as flour to Galveston, Tex., for export. Wheat, 226.
- Coleman, Ill., to Chicago switching district. Sand and gravel, 37.
- Colorado from Sault Ste. Marie and Fort Frances, Ontario, and Minnesota, Michigan, and Wisconsin. Newsprint paper, 33.
- Colton, Calif., to Arizona. Cement, 758.
- Colton, Calif., from El Paso, Tex., and defined territorial groups. Cereals, 452.
- Columbus, Miss., from Virginia cities. Class rates, 107 (120).
- Columbus, Ohio, to New York, N. Y. Frozen beef, 435.
- Concord, N. H., from Hudson, N. Y. Cement, 21.
- Concrete, Wash., from Portland, Oreg. Commodity rates, 159 (165).
- Connecticut from Alabama. Yellow-pine lumber, 694.
- Connellsville, Pa., from Michigan City, Ind. Sand and gravel, 512.
- Constable Hook, N. J., from Virginia, North Carolina, and South Carolina. Box shooks, 389.
- Cordele, Ga., from Florida. Cottonseed, 64.
- Corinth, Miss., from St. Louis, Mo. Commodity rates, 306.
- Corinth, Miss., from Virginia cities. Class rates, 107 (120).
- Cottonwood, Idaho, from Potlatch, Idaho. Brick, 699.
- Covington, La., from Destrehan, La. Fuel oil, 491.
- Cowley, Kans., to Salina, Kans., milled and reshipped as flour to New Orleans, La., for export. Wheat, 226.
- Coxheath, Ala., to Selma, Ala. Lumber; joint rates, 563.
- Crabtree, Pa., from Michigan City, Ind. Sand and gravel, 512.
- Crestmore, Calif., to Arizona. Cement, 758.
- Crowder, Miss., to Cairo, Ill. Hickory planks, billets, and flitches, 744.
- Cubero, N. Mex., to and from El Paso, Tex. Class rates, 526.
- Cushing, Okla., to Central City, Ohio, and Morgantown, W. Va. Iron tanks, 444.
- Dallas, Tex., from Grand Prairie, Tex. Gasoline and fuel oil, 197.
- Dallas, Tex., from Oklahoma, Arkansas, and Louisiana. Vegetable oils, 213.
- Dante, Va., to Charleston Mining and Manufacturing Co., Fla. Coal, 553.
- Dante district, Va., to Union, S. C. Bituminous coal, 633.
- Danville, Ill., to Gary, Hammond, and other Indiana points. Brick and brick articles, 624.
- Day, Fla., to Cordele, Ga. Cotton seed, 64.
- Deerfield, Ill., from Illinois and Indiana. Brick, 273.
- Deerfield, Kans., to Salina, Kans., milled and reshipped as flour to Galveston, Tex., for export. Wheat, 226.
- Delaware to and from North Carolina. Class rates, 264.
- Delaware, Lackawanna & Western R. R. points to Norfolk & Western Ry. points. High explosives, 10.

- Delphos, Ohio. Standard time, 281.
- Deming, N. Mex., to and from El Paso, Tex. Class rates, 526.
- Demopolis, Ala., to New Jersey and other eastern states. Yellow-pine lumber, 694.
- Denmark, Wis., to Bangor, Me. Canned condensed milk, 641.
- Des Moines, Iowa, to points east of Indiana-Illinois state line, or for export. Walnut dimension lumber, 673.
- Destrehan, La., to Covington, La. Fuel oil, 491.
- Detroit, Mich., from Ohio mines. Coal, 564.
- Douglas, Ariz., from California, Oregon, Washington, Idaho, Montana, Utah, Nevada, and British Columbia. Class and commodity rates, 405.
- Douglas, Ariz., from Crestmore, Colton, Oro Grande, Victorville, and Riverside, Calif., and El Paso, Tex. Cement, 758.
- Drumright, Okla., from Parkersburg, W. Va. Wooden bull-wheel arms, cants, and pins, 568.
- Duluth, Minn., to Boston, Mass. Wool and hair, 365.
- Duluth, Minn., from Haggart, N. Dak. Fresh meat, 615.
- Dyersburg, Tenn., from St. Louis, Mo. Commodity rates, 306.
- East Dubuque, Ill., from Des Moines, Iowa, destined to points east of Indiana-Illinois state line or for export. Walnut dimension lumber, 673.
- Eastern cities to and from Mississippi Valley territory and other points. Class rates, 107.
- Eastern group. Apples; storage in transit, 627.
- Eastern trunk line territory from points on Lake Erie & Western R. R., milled in transit at Indianapolis, Ind. Grain, 416.
- East Keokuk, Ill., from Des Moines, Iowa, destined to points east of Indiana-Illinois state line or for export. Walnut dimension lumber, 673.
- Eastland, Tex., from Parkersburg, W. Va. Steel crown blocks, and steel calf-wheel and bull-wheel shafts, 154.
- East Liverpool, Ohio, to and from Pennsylvania and Ohio. Passenger fares, 517.
- Effner, Ind., from Alabama. Yellow-pine lumber, 694.
- Eldnar Mine, Ill., to Rose Hill, Ill. Lump coal, 73.
- Eldorado, Kans., from Parkersburg, W. Va. Wooden bull-wheel arms, cants, and pins, 568.
- Elgin, Ill., to Chicago switching district. Sand and gravel, 37.
- Elizabethport, N. J., from Alabama, reconsigned at Louisville, Ky. Yellow-pine lumber, 694.
- Elkhorn City, Ky., to Charleston Mining and Manufacturing Co., Fla. Coal, 553.
- Ellisville, Miss., from Virginia cities. Class rates, 107 (120).
- Elmwood Place, Ohio, to Minden, Fraziers spur, Shreveport, and Gahagan, La. Iron and steel tanks and lumber, 532.
- El Paso, Tex., to Arizona. Cement, 758.
- El Paso, Tex., to Arizona and California. Cereals, 452.
- El Paso, Tex., to Boston, Mass. Wool and hair, 365.
- El Paso, Tex., to and from New Mexico and Arizona. Class rates, 526.
- El Paso, Tex., from Oregon, Washington, Utah, and Idaho. Lumber and forest products, 12.
- Emporia, Va., to New York, New Jersey, Pennsylvania, and other eastern states. Box shooks, 389.
- Engels, Calif., to Wabuska, Nev. Ore and concentrates, 477.
- Eureka, Calif. Free time, 400.
- Evansville, Ind., to Johnson City, Tenn. Class and commodity rates, 709.
- Everett, Wash., from Portland, Oreg. Commodity rates, 159 (165).

- Everett, Wash., to Seattle, Wash. Vegetable oils, 585.
- Exeter, Va., to Charleston Mining and Manufacturing Co., Fla. Coal, 553.
- Export Oil Spur, La., from Burkburnett, Tex., for export. Fuel oil, 175.
- Fairfield, Ala., from Piper, Ala. Coal, 50.
- Faribault, Minn., to Chicago and Peoria, Ill., and St. Louis, Mo., and points taking same rates. Scrap paper, rags, and old rope, 607.
- Farmville, Va., from southeastern territory. Lumber and lumber products, 591.
- Fayetteville, Ark., from Westville, Okla. Apples, 69.
- Fayville, Ill., from Kansas City, Mo. Glycerin, 635.
- Felipe, Ariz., to and from El Paso and other Texas points. Class rates, 526.
- Findlay, Ohio, from Beattyville, Ky. Crude petroleum, 704.
- Fitchburg, Mass., from Hudson, N. Y. Cement, 21.
- Flagstaff, Ariz., from Minneapolis, Minn. Barley flour, 81 (82).
- Flint, Calif., to Tolenas, Calif. Lime rock, 507.
- Florida to Cordele, Ga. Cottonseed, 64.
- Florida to Memphis, Tenn. Stock cattle, 593.
- Florida to Nashville, Tenn. Commodity rates, 306 (340).
- Florida to Norfolk & Western Ry. points. Lumber and products, 591.
- Florida to and from North Carolina. Class rates, 264.
- Florida to various destinations. Strawberries; estimated weights in pony refrigerators, 610.
- Fontana, Wis., to Chicago switching district. Sand and gravel, 37.
- Fort Frances, Ont., to the west and southwest. Newsprint paper, 33.
- Fort Gibson, Okla., to Joplin, Webb City, and Springfield, Mo., and Pittsburg, Independence, and Iola, Kans. Sand, 601.
- Fort White, Fla., to Cordele, Ga. Cottonseed, 64.
- Fort Worth, Tex., to Boston, Mass. Wool and hair, 365.
- Fort Worth, Tex., from Hart Spur, Tex. Sand and gravel, 248.
- Franklin, Pa., to intrastate destinations. Petroleum and asphaltum, 61.
- Fraziers spur, La., from Jenks and Morris, Okla., Ranger, Tex., and Elmwood Place and Ivorydale, Ohio. Iron and steel tanks and lumber, 532.
- Fuller, Wash., to and from Oregon and Vancouver, B. C. Class and commodity rates, 159.
- Fulton-Peoria district, Ill., to Illinois, Indiana, Iowa, Minnesota, Wisconsin, Michigan, Nebraska, Kansas, North Dakota, South Dakota, and Missouri. Bituminous coal, 751.
- Gahagan, La., from Jenks and Morris, Okla., Ranger, Tex., and Elmwood Place and Ivorydale, Ohio. Iron and steel tanks and lumber, 532.
- Gainesville, Fla., to Memphis, Tenn. Stock cattle, 593.
- Gallup, N. Mex., from Minneapolis, Minn. Barley flour, 81 (82).
- Galveston, Tex., from Kansas, milled in transit at Salina, Kans. Flour for export, 226.
- Galveston, Tex., from Minneapolis, Minn., for export. Terminal charges on grain and products, 629.
- Galveston, Tex., from Parkersburg, W. Va. Wooden bull-wheel arms, cants, and pins, 568.
- Galveston, Tex., to various points. Green and roasted coffee, 26.
- Garber, Okla., from Parkersburg, W. Va. Wooden bull-wheel arms, cants, and pins, 568.
- Gary, Ind., from Danville, Ill. Brick and brick articles, 624.
- Gary, Ind., to Hazelhurst, Miss. Sulphate of ammonia, 203.
- Georgia to Nashville, Tenn. Commodity rates, 306 (340).
- Georgia to Norfolk & Western Ry. points. Lumber and products, 591.
- 64 I. C. C.

- Georgia to and from North Carolina. Class rates, 264.
- Gibbs, Tenn., from St. Louis, Mo. Commodity rates, 306.
- Gibbstown, N. J., from Retsof, Watkins, Ithaca, and Ludlowville, N. Y. Salt, 14.
- Gilby, N. Dak., to Omaha, Nebr. White clover seed, 75.
- Gladys, Okla., to Cape Girardeau, Mo. Crushed gypsum rock, 662.
- Glasgow, Pa., to and from Ohio and Pennsylvania. Passenger fares, 517.
- Glen View, Ill., to Chicago switching district. Brick, 273.
- Glen View, Ill., from Illinois and Indiana. Brick, 273.
- Globe, Ariz., from Minneapolis, Minn. Barley flour, 81 (82).
- Gloster, Miss., from St. Louis, Mo. Commodity rates, 306.
- Good Hope, La., to Cincinnati, Ohio. Liquid asphalt, 292.
- Gordon, Wis., to Hayward, Wis., for manufacture and reshipment. Logs, 575.
- Goshen, N. Y., from Paterson, N. J. Ashes, 149.
- Grafton, W. Va., from Michigan City, Ind. Sand and gravel, 512.
- Granby, Mo., to Seattle, Wash., for export. Pig lead, 4.
- Grand Forks, N. Dak., to Omaha, Nebr. White clover seed, 75.
- Grand Island, Nebr., from Texas. Fruits and vegetables, 748.
- Grand Junction, Tenn., from St. Louis, Mo. Commodity rates, 306.
- Grand Junction, Tenn., from Virginia cities. Class rates, 107 (120).
- Grand Prairie, Tex., to Dallas, Tex. Gasoline and fuel oil, 197.
- Grand Rapids, Mich., to Hannibal and Prospect Hill, Mo. Crushed gypsum rock, 662.
- Grants, N. Mex., to and from El Paso, Tex. Class rates, 526.
- Grants Pass, Oreg., to San Francisco, Calif., and other bay points. Sheep, 647.
- Gravel Pit, Ill., to Chicago switching district. Sand and gravel, 37.
- Grays Harbor from Portland, Oreg., and Seattle and Tacoma, Wash. Commodity rates, 159 (164).
- Great Falls, Mont., from Oregon and Washington. Newsprint paper, 557.
- Great Northern Clay Company's spur, Wash., to Vancouver and New Westminster, B. C. Commodity rates, 159 (165).
- Greensburg, Kans., to Salina, Kans., milled and reshipped as flour to New Orleans, La., for export. Wheat, 226.
- Greenfield, Mass., from Hudson, N. Y. Cement, 21.
- Greenville, Miss., from St. Louis, Mo. Commodity rates, 306.
- Greenville, Miss., from Virginia cities. Class rates, 107 (120).
- Greenwood, Fla., to Bainbridge, Ga. Peanuts, 71.
- Greenwood, Miss., from St. Louis, Mo. Commodity rates, 306.
- Greenwood, Miss., from Virginia cities. Class rates, 107 (120).
- Grenada, Miss., from various points. Commodity rates, 306 (332).
- Gretna, La., from Avondale, La., originating at West Tulsa, Okla. Gasoline, 201.
- Gulfport, Miss., from Omaha, Nebr. Commodity rates, 306 (337).
- Gulfport, Miss., from Virginia cities. Class rates, 107 (120).
- Gulf ports to Memphis, Tenn., New Orleans, La., Nashville, Tenn., and points in Mississippi Valley territory. Commodity rates, 306.
- Gulf ports to Mississippi River points and Ohio River crossings, and other points in southern territory. Asphalt, 395.
- Gulf ports to various points. Green and roasted coffee, 26.
- Haggart, N. Dak., to St. Paul and Duluth, Minn. Fresh meat, 615.
- Halvern, Calif., to Alvarado, Calif., for feeding. Livestock; unperformed out-of-line movement, 157.
- Hamilton, Ohio. Demurrage charges on sand, 439.

- Hamilton, Ohio, to Vancouver, B. C., for export. Newsprint, book and writing paper, 186.
- Hammond, Ind., from Danville, Ill. Brick and brick articles, 624.
- Hammond's, Ill., to Chicago switching district. Sand and gravel, 37.
- Hannibal, Mo., from Grand Rapids, Mich. Crushed gypsum rock, 662.
- Harriston, Miss., from St. Louis, Mo. Commodity rates, 306.
- Hart Spur, Tex., to Fort Worth, Tex. Sand and gravel, 248.
- Harveyton, Ky., to Red Bank, Ohio. Bituminous coal, 223.
- Haskell, N. J., to Hopewell, Va. Zinc-lined wooden boxes, 170.
- Haskell, N. J., from Hopewell, Va., reconsigned to Parlin, N. J. Wet nitrocellulose, 667.
- Hassayampa, Ariz., from Crestmore, Colton, Oro Grande, Victorville, and Riverside, Calif., and El Paso, Tex. Cement, 758.
- Hastings, Nebr., from Texas. Fruits and vegetables, 748.
- Hatch, N. Mex., to and from El Paso, Tex. Class rates, 526.
- Hattiesburg, Miss., from St. Louis, Mo. Commodity rates, 306.
- Hattiesburg, Miss., from Virginia cities. Class rates, 107 (120).
- Hawthorne, Wis., to Hayward, Wis., for manufacture and reshipment. Logs, 575.
- Hayward, Wis., from Beebe, Hawthorne, and Gordon, Wis., for manufacture and reshipment. Logs, 575.
- Hazelhurst, Miss., from Gary, Ind. Sulphate of ammonia, 203.
- Hecla, S. Dak., from Stanton, N. Dak. Lignite coal, 59.
- Helena, Ark., from St. Louis, Mo. Commodity rates, 306.
- Helena, Ark., from Virginia cities. Class rates, 107 (120).
- Helena, Mont., from Oregon and Washington. Newsprint paper, 557.
- Hermanville, Miss., from St. Louis, Mo. Commodity rates, 306.
- Herrin, Ill., to Chicago, Ill. Coal, 555.
- Hillyard, Wash., from Kenilworth, Utah. Coal, 503.
- Holbrook, Ariz., from Crestmore, Colton, Oro Grande, Victorville, and Riverside, Calif., and El Paso, Tex. Cement, 758.
- Holbrook, Ariz., from Minneapolis, Minn. Barley flour, 81 (82).
- Holly Springs, Miss., from St. Louis, Mo. Commodity rates, 306.
- Holly Springs, Miss., from Virginia cities. Class rates, 107 (120).
- Homer, La., from Parkersburg, W. Va. Wooden bull-wheel arms, cants, and pins, 568.
- Hominy, Okla., from Parkersburg, W. Va. Wooden bull-wheel arms, cants, and pins, 568.
- Hopewell, Va., to Haskell, N. J., reconsigned to Parlin, N. J. Wet nitrocellulose, 667.
- Hopewell, Va., from Haskell, Parlin, and Carney's Point, N. J. Zinc-lined wooden boxes, 170.
- Houston, Miss., from Virginia cities. Class rates, 107 (120).
- Houston, Tex., from Parkersburg, W. Va. Wooden bull-wheel arms, cants, and pins, 568.
- Hubbard, Ohio, to and from Youngstown, Ohio. Passenger fares, 493.
- Hudson, N. Y., to New England. Cement, 21.
- Hull, Ala., to Effner, Ind. Yellow-pine lumber, 694.
- Huntington, Oreg., to San Francisco, Calif., and other bay points. Sheep, 647.
- Huntington, W. Va., to Johnson City, Tenn. Class and commodity rates, 709.
- Hustle, Ill., to Virginia cities, milled in transit at Indianapolis, Ind. Grain, 416.
- Idaho to Douglas, Ariz. Class and commodity rates, 405.
- Idaho to El Paso, Tex. Lumber and forest products, 12.

- Idaho from Minnesota, North Dakota, South Dakota, Iowa, Nebraska, and Kansas. Coarse grain, 461.
- Idaho to San Francisco, Calif., and other bay points. Sheep, 647.
- Idaho to Ucross and Buffalo, Wyo. Lumber and products, 485.
- Illinois to Chicago switching district. Sand and gravel, 37.
- Illinois from Galveston and other Texas ports. Green and roasted coffee, 26.
- Illinois from Illinois mines. Bituminous coal, 751.
- Illinois to Memphis, Tenn., and Cairo, Ill. Hickory planks, billets, and fitches, 744.
- Illinois to southeastern and Mississippi Valley territories. Commodity rates, 306 (337).
- Illinois from various points. Heater service for fresh fruits and vegetables, 283.
- Illinois-Indiana state line, points east of, from Mason City, Iowa. Scrap paper, rags, and old rope, 607.
- Illinois mines to Illinois, Indiana, Iowa, Minnesota, Wisconsin, Michigan, Nebraska, Kansas, North Dakota, South Dakota, and Missouri. Bituminous coal, 751.
- Independence, Kans., from Fort Gibson, Okla. Sand, 601.
- Indiana from Danville, Ill. Brick and articles, 624.
- Indiana from Illinois mines. Bituminous coal, 751.
- Indiana to Virginia cities, milled in transit at Indianapolis, Ind. Grain, 416.
- Indiana-Illinois state line, points east of, from Des Moines, Iowa. Walnut dimension lumber, 673.
- Indiana points within Chicago switching district from various points. Fresh fruits and vegetables; heater service, 283.
- Indianapolis, Ind. Livestock, 645.
- Indianapolis, Ind. Grain; transit services, 416.
- Indianapolis, Ind. Sand and gravel; switching charges, 457.
- International Falls, Minn., to the west and southwest. Newsprint paper, 33.
- Iola, Kans., from Fort Gibson, Okla. Sand, 601.
- Iowa to Chicago and Peoria, Ill., and St. Louis, Mo., and points taking same rates. Scrap paper, rags, and old rope, 607.
- Iowa from Galveston and other Texas ports. Green and roasted coffee, 26.
- Iowa from Illinois mines. Bituminous coal, 751.
- Iowa to Washington, Oregon, Montana, Idaho, and Canada. Coarse grain, 461.
- Iowa Park, Tex., to New Orleans, La. Crude petroleum, 289.
- Ironton, Ohio, to Johnson City, Tenn. Class and commodity rates, 709.
- Ironton group, Ohio, to Toledo, Ohio, Detroit, Mich., and other points. Coal, 564.
- Ithaca, N. Y., to Carney's Point, Gibbstown, and Paulsboro, N. J. Salt, 14.
- Ivorydale, Ohio, to Argo, Ill. Barytes, 443.
- Ivorydale, Ohio, to Minden, Fraziers spur, Shreveport, and Gahagan, La. Iron and steel tanks and lumber, 532.
- Jackson, Miss., from St. Louis, Mo. Commodity rates, 306.
- Jackson, Miss., from Virginia cities. Class rates, 107 (120).
- Jackson, Tenn., from St. Louis, Mo. Commodity rates, 306.
- Jackson county, Ohio, to Toledo, Ohio, Detroit, Mich., and other points. Coal, 564.
- Janesville, Wis., to Chicago switching district. Sand and gravel, 37.
- Jasper, Fla., to Memphis, Tenn. Stock cattle, 593.
- Jefferson Park, Ill., from Cantine, Ill. Lump Coal, 73.
- Jenks, Okla., to Minden, Fraziers spur, Shreveport, and Gahagan, La. Iron and steel tanks and lumber, 532.

- Johnson City, Tenn., from Ohio and Mississippi river crossings, central and Buffalo-Pittsburgh territories, and Memphis and Nashville, Tenn. Class and commodity rates, 709.
- Johnstown, Pa. Switching, 737.
- Johnstown, Pa., from Michigan City, Ind. Sand and gravel, 512.
- Johnstown-Connellsville territory from Michigan City, Ind. Sand and gravel, 512.
- Joplin, Mo., from Fort Gibson, Okla. Sand, 601.
- Kalamazoo, Mich., to Vancouver, B. C., for export. Newsprint, book, and writing paper, 186.
- Kannapolis, N. C., from Richmond, Va. Sulphuric acid, 183.
- Kansas. Increase in rates, 679.
- Kansas to Alton, Iowa, Pipestone, Minn., and Beresford, S. Dak. Petroleum products, 178.
- Kansas from Galveston, Tex., New Orleans, La., and other Gulf ports. Green and roasted coffee, 26.
- Kansas from Illinois mines. Bituminous coal, 751.
- Kansas from Missouri River points. Wooden egg cases or carriers, egg-case material, and egg-case fillers, 51.
- Kansas from Parkersburg, W. Va. Wooden bull-wheel arms, cants, and pins, 568.
- Kansas to Salina, Kans., milled and reshipped as flour to New Orleans, La., and Galveston, Tex., for export. Wheat, 226.
- Kansas from Sault Ste. Marie and Fort Frances, Ontario, and Minnesota, Michigan, and Wisconsin. Newsprint paper, 33.
- Kansas to Washington, Oregon, Montana, Idaho, and Canada. Coarse grain, 461.
- Kansas City, Mo., to Fayetteville, Ill. Glycerin, 635.
- Kansas City, Mo., from Sault Ste. Marie and Fort Frances, Ontario, and Minnesota, Michigan, and Wisconsin. Newsprint paper, 33.
- Kansas City, Mo., from Staunton and Mount Olive, Ill. Fine coal, 536.
- Keene, N. H., from Hudson, N. Y. Cement, 21.
- Kenilworth, Utah, to Hillyard, Wash. Coal, 503.
- Kenova, W. Va., to Johnson City, Tenn. Class and commodity rates, 709.
- Kentucky to Charleston Mining and Manufacturing Co., Fla. Coal, 553.
- Kentucky to Memphis, Tenn., and Cairo, Ill. Hickory planks, billets, and flitches, 744.
- Kentucky mines to Michigan. Bituminous coal, 577.
- Keokee, Va., to Charleston Mining and Manufacturing Co., Fla. Coal, 553.
- Kingman, Ariz., from Crestmore, Colton, Oro Grande, Victorville, and Riverside, Calif., and El Paso, Tex. Cement, 758.
- King's Spur, Fla., to Memphis, Tenn. Stock cattle, 593.
- Kirk, Oreg., to San Francisco, Calif., and other bay points. Sheep, 647.
- Kissimmee, Fla., to Memphis, Tenn. Stock cattle, 593.
- Klamath Falls, Oreg., to San Francisco, Calif., and other bay points. Sheep, 647.
- Knoxville, Tenn., from nearby quarries. Marble spalls or chips, 67.
- Laconia, N. H., from Hudson, N. Y. Cement, 21.
- Ladysmith, Wis., to Vancouver, B. C., and Tacoma, Wash., for export. Newsprint, book, and writing paper, 186.
- Laguna, N. Mex., to and from El Paso, Tex. Class rates, 526.
- Lake City, Fla., to Memphis, Tenn. Stock cattle, 593.
- Lakeland, Fla., to various destinations. Strawberries; estimated weights in pony refrigerators, 610.
- Lake Valley, N. Mex., to and from El Paso, Tex. Class rates, 526.

- Lansing, Ill., to Chicago switching district. Brick, 273.
- Latonia, Ky., from Carrel street station, Cincinnati, Ohio. Glass bottles, 619.
- Laurel, Miss. Lumber; car distribution, 732.
- Laurel, Miss., from Virginia cities. Class rates, 107 (120).
- Laurel Hill (Nichols siding), N. Y. Copper and lead; refining-in-transit arrangements, 257.
- Lawrence, Mass., from Hudson, N. Y. Cement, 21.
- Lawrence, Mass., from Skowhegan, Me. Woolen yarn, 261.
- Lawrenceville, Ill., to Petersburg, Tenn. Petroleum gas oil, 643.
- Lawton, Okla., from Chester, Pa. Wrought iron-pipe, 78.
- Leckrone, Pa., from Michigan City, Ind. Sand and gravel, 512.
- Leland, Miss., from St. Louis, Mo. Commodity rates, 306.
- Lemesa, Tex., to Moorcroft, Wyo., originally shipped from Midland, S. Dak., for wintering. Cattle, 147.
- Lewis, La., from Parkersburg, W. Va. Wooden bull-wheel arms, cants, and pins, 568.
- Lewiston, Mont., from Oregon and Washington. Newsprint paper, 557.
- Lexington, Ky., to Cincinnati, Ohio. Gasoline and kerosene, 621.
- Lexington, Miss., from St. Louis, Mo. Commodity rates, 306.
- Libby, Nev., to San Francisco, Calif., and other bay points. Sheep, 647.
- Liberal, Kans., to Arizona and California. Cereals, 452.
- Libertyville, Ill., to Chicago switching district. Sand and gravel, 37.
- Lindsborg, Kans., to New Orleans, La., and Galveston, Tex., for export. Flour, 226.
- Little Rock, Ark., from Texas ports. Green and roasted coffee, 26 (32).
- Live Oak, Fla., to Cordele, Ga. Cottonseed, 64.
- Lone Pine, Calif., to Brawley and Calipatria, Calif. Feeder cattle, 221.
- Los Angeles, Calif. Free time, 400.
- Los Angeles, Calif., from Chicago, Ill. Speedometers, speedometer heads, and speedometer connections; rating, 541.
- Los Angeles, Calif., from Minneapolis, Minn., and Omaha, Nebr. Barley flour, 81.
- Louisiana to Cincinnati, Ohio. Liquid asphalt, 292.
- Louisiana to Dallas, Tex. Vegetable oils, 213.
- Louisiana from Galveston and other Texas ports. Green and roasted coffee, 26.
- Louisiana to Memphis, Tenn., and Cairo, Ill. Hickory planks, billets, and fitches, 744.
- Louisiana from Parkersburg, W. Va. Wooden bull-wheel arms, cants, and pins, 568.
- Louisiana from Sault Ste. Marie and Fort Frances, Ontario, and Minnesota, Michigan, and Wisconsin. Newsprint paper, 33.
- Louisville & Nashville stations from Bridgeport and Mascot, Tenn. Ground and powdered stone, 515.
- Louisville, Ky. Lumber; demurrage, 694.
- Louisville, Ky., from Alabama. Yellow-pine lumber, 694.
- Louisville, Ky., to and from New Albany, Ind. Passenger fares, 468.
- Louisville, Ky., to Seattle, Wash. Peanut oil, 426.
- Louisville, Ky., to southeastern and Mississippi Valley territories. Commodity rates, 306 (335).
- Lowell, Mass., from Skowhegan, Me. Woolen yarn, 261.
- Ludlowville, N. Y., to Carney's Point, Gibbstown, and Paulsboro, N. J. Salt, 14.
- Lukens, Fla., to Pittsburgh, Pa. Lumber, 432.
- Lupton, Ariz., to and from El Paso and other Texas points. Class rates, 526.

- Lynchburg, Va., from southeastern territory. Lumber and products, 591.
- Maben, Miss., from Virginia cities. Class rates, 107 (120).
- Machine Shop, Mass., from Skowhegan, Me. Woolen yarn, 261.
- Manchester, N. H., from Hudson, N. Y. Cement, 21.
- Mankato, Minn., to Chicago and Peoria, Ill., and St. Louis, Mo., and points taking same rates. Scrap paper, rags, and old rope, 607.
- Mansfield, La., from Parkersburg, W. Va. Wooden bull-wheel arms, cants, and pins, 568.
- Mansfield, La., from Scottsville, Tex. Pipe and oil well machinery, 665.
- Manuelito, N. Mex., to and from El Paso and other Texas points. Class rates, 526.
- Marion, S. C., to New York, New Jersey, Pennsylvania, and other eastern states. Box shooks, 389.
- Marks, Miss., from St. Louis, Mo. Commodity rates, 306.
- Martin, Tenn., from St. Louis, Mo. Commodity rates, 306.
- Maryland from Alabama. Yellow-pine lumber, 694.
- Maryland to and from North Carolina. Class rates, 264.
- Mascot, Tenn., to Louisville & Nashville stations. Ground and powdered stone, 515.
- Mason City, Iowa, to Mississippi River crossings, destined to points east of Illinois-Indiana state line. Scrap paper, rags, and old rope, 607.
- Masonville, Pa., from Michigan City, Ind. Sand and gravel, 512.
- Massachusetts from Alabama. Yellow-pine lumber, 694.
- Mathiston, Miss., from Virginia cities. Class rates, 107 (120).
- Maynard, Ind., to Chicago switching district. Brick, 273.
- Maynard, Mass., from Skowhegan, Me. Woolen yarn, 261.
- Mayo, Fla., to Cordele, Ga. Cottonseed, 64.
- Melrose, N. Mex., to Arizona and California. Cereals, 452.
- Memphis, Tenn. Sand; switching, 243.
- Memphis, Tenn., to Charleston, Mo. Corn meal, 671.
- Memphis, Tenn., to and from eastern and Virginia cities and Carolina territory. Class rates, 107.
- Memphis, Tenn., from Florida and Birmingham, Ala. Stock cattle, 593.
- Memphis, Tenn., from Galveston and other Texas ports. Green and roasted coffee, 26.
- Memphis, Tenn., from Illinois, Kentucky, Tennessee, Mississippi, Alabama, and Louisiana. Hickory planks, billets, and fitches, 744.
- Memphis, Tenn., to Johnson City, Tenn. Class and commodity rates, 709.
- Memphis, Tenn., from Ohio and Mississippi river crossings, and Gulf ports. Commodity rates, 306.
- Meraux, La., to Cincinnati, Ohio. Liquid asphalt, 292.
- Meridian, Miss., from St. Louis, Mo. Commodity rates, 306.
- Meridian, Miss., from Virginia cities. Class rates, 107 (120).
- Mesa, Ariz., from El Paso, Tex., and defined territorial groups. Cereals, 452.
- Michigan from Illinois mines. Bituminous coal, 751.
- Michigan from Kentucky mines. Bituminous coal, 577.
- Michigan to the west and southwest. Newsprint paper, 33.
- Michigan City, Ind., to Johnstown-Connellsville territory. Sand and gravel, 512.
- Michigan, N. Dak., to Omaha, Nebr. White-clover seed, 75.
- Midcontinent oil field, Kans.-Okla., to Alton, Iowa, Beresford, S. Dak., and Pipestone, Minn. Petroleum products, 178.

- Middleburg, Pa., from Virginia, North Carolina, and South Carolina. Box shooks, 389.
- Middleton, Tenn., from Virginia cities. Class rates, 107 (120).
- Midland, Oreg., to San Francisco, Calif., and other bay points. Sheep, 647.
- Midland, Pa., to and from Ohio and Pennsylvania. Passenger fares, 517.
- Midland, S. Dak., to Lemesa, Tex., for wintering, and reshipped to Moorcroft, Wyo. Cattle, 147.
- Milan, Tenn., from St. Louis, Mo. Commodity rates, 306.
- Millers, Ind., to Chicago switching district. Brick, 273.
- Millington, Ill., from New York, N. Y. Imported flint pebbles, 302.
- Millwood, Wash., to Montana. Newsprint paper, 557.
- Milton, Pa., to North Carolina and South Carolina. Empty tank cars, 637.
- Minden, La., from Jenks and Morris, Okla., Ranger, Tex., and Elmwood Place and Ivorydale, Ohio. Iron and steel tanks and lumber, 532.
- Minneapolis, Minn., to Galveston, Tex., for export. Grain and products; terminal charges, 629.
- Minneapolis, Minn., to Los Angeles, Calif., and other points in California, Arizona, and New Mexico. Barley flour, 81.
- Minneapolis, Minn., to Spur No. 8, Minn. Garbage, 57.
- Minnesota to Chicago and Peoria, Ill., and St. Louis, Mo., and points taking same rates. Scrap paper, rags, and old rope, 607.
- Minnesota from Galveston and other Texas ports. Green and roasted coffee, 26.
- Minnesota from Illinois mines. Bituminous coal, 751.
- Minnesota to Washington, Oregon, Montana, Idaho, and Canada. Coarse grain, 461.
- Minnesota to the west and southwest. Newsprint paper, 33.
- Mississippi to Memphis, Tenn., and Cairo, Ill. Hickory planks, billets, and flitches, 744.
- Mississippi to Norfolk & Western Ry. points. Lumber and products, 591.
- Mississippi to and from North Carolina. Class rates, 264.
- Mississippi River from Gulf ports. Asphalt, 395.
- Mississippi River crossings to Boston, Mass. Wool and hair, 365.
- Mississippi River crossings from Des Moines, Iowa, destined to points east of Indiana-Illinois state line or for export. Walnut dimension lumber, 673.
- Mississippi River crossings to Johnson City, Tenn. Class and commodity rates, 709.
- Mississippi River crossings from Mason City, Iowa. Scrap paper, rags, and old rope, 607.
- Mississippi River crossings to Memphis, Tenn., New Orleans, La., Nashville, Tenn., and points in Mississippi Valley territory. Commodity rates, 306.
- Mississippi Valley territory to and from eastern and Virginia cities and Carolina territory. Class rates, 107.
- Mississippi Valley territory from Ohio and Mississippi river crossings, Missouri River points, and Gulf ports. Commodity rates, 306.
- Missouri. Increase in rates, 233.
- Missouri from Galveston, Tex., New Orleans, La., and other Gulf ports. Green and roasted coffee, 26.
- Missouri from Illinois mines. Bituminous coal, 751.
- Missouri from Sault Ste. Marie and Fort Frances, Ontario, and Minnesota, Michigan, and Wisconsin. Newsprint paper, 33.
- Missouri River to Kansas. Wooden egg cases or carriers, egg-case material, and egg-case fillers, 51.

- Missouri River to Mississippi Valley and southeastern territories. Commodity rates, 306.
- Missouri River from Sault Ste. Marie and Fort Frances, Ontario, and Minnesota, Michigan, and Wisconsin. Newsprint paper, 33.
- Missouri River from Texas ports. Green and roasted coffee, 26 (32).
- Mizpah, Minn., to Albion, Iowa. White cedar poles, 145.
- Mobile, Ala., from various points. Commodity rates, 306 (332).
- Mobile, Ala., from Virginia cities. Class rates, 107 (120).
- Modoc, Kans., to Salina, Kans., milled and reshipped as flour to Galveston, Tex., for export. Wheat, 226.
- Mogadore, Ohio. Standard time, 281.
- Mojave, Calif., from El Paso, Tex., and defined territorial groups. Cereals, 452.
- Montana from Chattanooga, Tenn., and Alabama. Cast-iron pipe and pipe connections, 638.
- Montana to Douglas, Ariz. Class and commodity rates, 405.
- Montana from Minnesota, North Dakota, South Dakota, Iowa, Nebraska, and Kansas. Coarse grain, 461.
- Montana from Oregon and Washington. Newsprint paper, 557.
- Montana to Ucross and Buffalo, Wyo. Lumber and products, 485.
- Monte Cristo, Wash., from Portland, Oreg. Commodity rates, 159 (165).
- Moorcroft, Wyo., from Lemesa, Tex., originally shipped from Midland, S. Dak., for wintering. Cattle, 147.
- Moorhead, Miss., from St. Louis, Mo. Commodity rates, 306.
- Morgantown, W. Va., from Cushing, Okla. Iron tanks, 444.
- Morris, Okla., to Minden, Fraziers spur, Shreveport, and Gahagan, La. Iron and steel tanks and lumber, 532.
- Moss, Va., to Toledo, Ohio. Bituminous coal, 143.
- Mountain-Pacific territory. Grain, grain products, and hay, 85.
- Mount Arlington, N. J., to Norfolk & Western Ry. points. High explosives, 10.
- Mount Olive, Ill., to Kansas City, Mo. Fine coal, 536.
- Nashua, N. H., from Hudson, N. Y. Cement, 21.
- Nashville, Tenn., to Johnson City, Tenn. Class and commodity rates, 709.
- Nashville, Tenn., from Ohio and Mississippi river crossings, southeastern points, Gulf ports, Virginia cities, New York, N. Y., and other points in trunk line territory. Commodity rates, 306.
- Natchez, Miss., from Rosewood, La. Oats, 199.
- Natchez, Miss., from St. Louis, Mo. Commodity rates, 306.
- Natchez, Miss., from Virginia cities. Class rates, 107 (120).
- Nebraska from Galveston, Tex., New Orleans, La., and other Gulf ports. Green and roasted coffee, 26.
- Nebraska from Illinois mines. Bituminous coal, 751.
- Nebraska from Sault Ste. Marie and Fort Frances, Ontario, and Minnesota, Michigan, and Wisconsin. Newsprint paper, 33.
- Nebraska to Washington, Oregon, Montana, Idaho, and Canada. Coarse grain, 461.
- Nevada to and from Arizona, New Mexico, and other states. Passenger fares, 253.
- Nevada to Douglas, Ariz. Class and commodity rates, 405.
- Nevada to Oakland. Livestock, 157.
- Nevada to San Francisco, Calif., and other bay points. Sheep, 647.
- New Albany, Ind., to and from Louisville, Ky. Passenger fares, 468.
- New Albany, Miss., from St. Louis, Mo. Commodity rates, 306.
- New Albany, Miss., from Virginia cities. Class rates, 107 (120).

- Newark, N. J., from Undercliff, N. J. Linseed oil, 753.
- Newberry, Fla., to Memphis, Tenn. Stock cattle, 593.
- New Castle, Wyo., from New Orleans, La., and other Gulf ports. Green and roasted coffee, 26.
- New England from Hudson, N. Y. Cement, 21.
- New England to and from North Carolina. Class rates, 264.
- New England from points west of Buffalo, N. Y., and Pittsburgh, Pa., refined in transit at Laurel Hill (Nichols siding), N. Y. Copper and lead, 257.
- New Jersey from Alabama. Yellow-pine lumber, 694.
- New Jersey to and from North Carolina. Class rates, 264.
- New Jersey from Virginia, North Carolina, and South Carolina. Box shooks, 389.
- New London, Ohio. Standard time, 281.
- New Mexico to and from Arizona, Nevada, and other states. Passenger fares, 253.
- New Mexico to and from El Paso and other Texas points. Class rates, 526.
- New Mexico from Minneapolis, Minn., and Omaha, Nebr. Barley flour, 81.
- New Orleans, La. Automobile trucks; demurrage and storage charges, 588.
- New Orleans, La., to Cincinnati, Ohio. Liquid asphalt, 292.
- New Orleans, La., to and from eastern and Virginia cities and Carolina territory. Class rates, 107.
- New Orleans, La., from Iowa Park, Tex. Crude petroleum, 289.
- New Orleans, La., from Kansas, milled in transit at Salina, Kans. Flour for export, 226.
- New Orleans, La., to Mississippi River points and Ohio River crossings and other points in southern territory. Asphalt, 395.
- New Orleans, La., from Ohio and Mississippi river crossings, and Gulf ports. Commodity rates, 306.
- New Orleans, La., to various points. Green and roasted coffee, 26.
- New Orleans, La., from Virginia cities. Class rates, 107 (120).
- Newport, Ky., from Carrel street station, Cincinnati, Ohio. Glass bottles, 619.
- Newport News, Va., to Big Island, Va. Wood pulp, 219.
- New River district, W. Va., to Uniontown, D. C., via Potomac Yard, Va. Bituminous coal, 191.
- Newton, Miss., from St. Louis, Mo. Commodity rates, 306.
- Newton, Miss., from Virginia cities. Class rates, 107 (120).
- New Westminster, B. C., to Seattle, Wash. Commodity rates, 159 (165).
- New York. Increase in rates, fares, and charges, 55.
- New York from Alabama. Yellow-pine lumber, 694.
- New York to and from North Carolina. Class rates, 264.
- New York from Virginia, North Carolina and South Carolina. Box shooks, 389.
- New York, N. Y., to Cheboygan, Mich. Myrobalans and bark extract, 437.
- New York, N. Y., from Columbus, Ohio. Frozen beef, 435.
- New York, N. Y., from Florida. Strawberries; estimated weights in pony refrigerators, 610.
- New York, N. Y., to Mississippi Valley territory and other points. Class rates, 107 (131).
- New York, N. Y., to Nashville, Tenn. Commodity rates, 306.
- New York, N. Y., to Ottawa, Wedron, Millington, and Oregon, Ill. Imported flint pebbles, 302.
- New York, N. Y., from Seattle and Tacoma, Wash., and San Francisco, Calif. Straw braid and hemp braid, 429.
- New York, N. Y., from Skowhegan, Me. Woolen yarn, 261.

- New York, N. Y., from Virginia, North Carolina, and South Carolina. Box shooks, 389.
- Nezperce, Idaho, from Storrs and Standardville, Utah, and Rock Springs, Wyo. Coal, 699.
- Nichols siding (Laurel Hill), N. Y. Copper and lead; refining-in-transit arrangements, 257.
- Norfolk & Western Ry. points from Delaware, Lackawanna & Western R. R. points. High explosives, 10.
- Norfolk & Western Ry. points from southeastern territory. Lumber and products, 591.
- Norfolk, Va., from southeastern territory. Lumber and products, 591.
- North Andover, Mass., from Skowhegan, Me. Woolen yarn, 261.
- North Baton Rouge, La., to Philadelphia, Pa. Paraffin wax, 702.
- North Carolina from Milton, Pa. Empty tank cars, 637.
- North Carolina to Nashville, Tenn. Commodity rates, 306 (340).
- North Carolina to New York, New Jersey, Pennsylvania, and other eastern states. Box shooks, 389.
- North Carolina to and from South Carolina, Georgia, Florida, Alabama, Mississippi, Tennessee, New England, New York, Pennsylvania, New Jersey, Maryland, and Delaware. Class rates, 264.
- North Dakota from Illinois mines. Bituminous coal, 751.
- North Dakota to Washington, Oregon, Montana, Idaho, and Canada. Coarse grain, 461.
- North Tonawanda, N. Y., to Canandaigua, N. Y. Lumber, 530.
- Norton, Va., from Delaware, Lackawanna & Western R. R. points. High explosives, 10.
- Norwich, Vt., from Hudson, N. Y. Cement, 21.
- Nutt, N. Mex., and and from El Paso, Tex. Class rates, 526.
- Oakland, Calif. Free time, 400.
- Oakland, Calif., from California and Nevada. Live Stock, 157.
- Oakland, Calif., from Chicago, Ill. Speedometers, speedometer heads, and speedometer connections; rating, 541.
- Official classification territory. Flavoring extracts; express classification, 53.
- Official classification territory. Hogs; car furnishing, 251.
- Official classification territory. Machine-finished steel roller chain, 195.
- Official classification territory. Paper shopping bags; rating, 423.
- Official classification territory. Sliced dried beef; rating, 205.
- Official classification territory from St. Louis, Mo. Floor-sweeping compound; rating, 299.
- Ohio. Passenger fares, 493.
- Ohio to and from Pennsylvania and Ohio. Passenger fares, 517.
- Ohio mines to Toledo, Ohio, Detroit, Mich., and other points. Coal, 564.
- Ohio River crossings from Gulf ports. Asphalt, 395.
- Ohio River crossings to Johnson City, Tenn. Class and commodity rates, 709.
- Ohio River crossings to Memphis, Tenn., New Orleans, La., Nashville, Tenn., and points in Mississippi Valley territory. Commodity rates, 306.
- Ohio River, territory south of. Class rates, 107.
- Oklahoma to Alton, Iowa, Pipestone, Minn., and Beresford, S. Dak. Petroleum products, 178.
- Oklahoma to Dallas, Tex. Vegetable oils, 213.
- Oklahoma from Galveston, Tex., New Orleans, La., and other Gulf ports. Green and roasted coffee, 26.
- 64 I. C. C.

- Oklahoma from Parkersburg, W. V. Wooden bull-wheel arms, cants, and pins, 568.
- Oklahoma from Sault Ste. Marie and Fort Frances, Ontario, and Minnesota, Michigan, and Wisconsin. Newsprint paper, 33.
- Okmulgee, Okla., from Parkersburg, W. Va. Wooden bull-wheel arms, cants, and pins, 568.
- Old Town, Fla., to Memphis, Tenn. Stock cattle, 593.
- Omaha, Nebr., from Gilby, Grand Forks, and Michigan, N. Dak. White-clover seed, 75.
- Omaha, Nebr., to Los Angeles, Calif., and other points in California, Arizona, and New Mexico. Barley flour, 81.
- Omaha, Nebr., from Sault Ste. Marie and Fort Frances, Ontario, and Minnesota, Michigan, and Wisconsin. Newsprint paper, 33.
- Omaha, Nebr., to southeastern and Mississippi Valley territories. Commodity rates, 306 (336).
- Oregon to Douglas, Ariz. Class and commodity rates, 405.
- Oregon to El Paso, Tex. Lumber and forest products, 12.
- Oregon from Minnesota, North Dakota, South Dakota, Iowa, Nebraska, and Kansas. Coarse grain, 461.
- Oregon to Montana. Newsprint paper, 557.
- Oregon to San Francisco, Calif., and other bay points. Sheep, 647.
- Oregon to various points in United States and Canada. Cedar shingles, 548.
- Oregon to and from Washington. Class and commodity rates, 159.
- Oregon, Ill., to Chicago switching district. Sand and gravel, 37 (49).
- Oregon, Ill., from New York, N. Y. Imported flint pebbles, 302.
- Oregon City, Oreg., to Montana. Newsprint paper, 557.
- Oro Grande, Calif., to Arizona. Cement, 758.
- Ottawa, Ill., from New York, N. Y. Imported flint pebbles, 302.
- Pacific coast points from Chicago, Ill. Speedometers, speedometer heads, and speedometer connections; rating, 541.
- Painesville, Ohio, to Seattle, Wash., for export. Soda ash, 599.
- Parker, Ariz., from Crestmore, Colton, Oro Grande, Victorville, and Riverside, Calif., and El Paso, Tex. Cement, 758.
- Parkersburg, W. Va., to Eastland and Ranger, Tex. Steel crown blocks and steel calf-wheel and bull-wheel shafts, 154.
- Parkersburg, W. Va., to Kansas, Oklahoma, Texas, and Louisiana. Wooden bull-wheel arms, cants, and pins, 568.
- Parlin, N. J., to Hopewell, Va. Zinc-lined wooden boxes, 170.
- Parlin, N. J., from Hopewell, Va., reconsigned at Haskell, N. J. Wet nitro-cellulose, 667.
- Paterson, N. J., to Goshen, N. Y. Ashes, 149.
- Paulsboro, N. J., from Retsof, Watkins, Ithaca, and Ludlowville, N. Y. Salt, 14.
- Pawhuska, Okla., from Parkersburg, W. Va. Wooden bull-wheel arms, cants, and pins, 568.
- Paxton, Calif., to Wabuska, Nev. Ore and concentrates, 477.
- Pendleton, Oreg., to San Francisco, Calif., and other bay points. Sheep, 647.
- Pennsylvania from Alabama. Yellow-pine lumber, 694.
- Pennsylvania to and from North Carolina. Class rates, 264.
- Pennsylvania to and from Ohio and Pennsylvania. Passenger fares, 517.
- Pennsylvania from Virginia, North Carolina, and South Carolina. Box shooks, 389.
- Pensacola, Fla., from Virginia cities. Class rates, 107 (120).
- Peoria, Ill., from Iowa and Minnesota. Scrap paper, rags, and old rope, 607.

- Perea, N. Mex., to and from El Paso, Tex. Class rates, 526.
- Perrot, S. C., to Petersburg, Va. Lumber, 660.
- Perth Amboy, N. J., from Rome, N. Y. Copper bars, 691.
- Petersburg, Tenn., from Lawrenceville, Ill. Petroleum gas oil, 643.
- Petersburg, Va. Lumber; demurrage, 660.
- Petersburg, Va., to New York, New Jersey, Pennsylvania, and other eastern states. Box shooks, 389.
- Petersburg, Va., from southeastern territory. Lumber and products, 591.
- Phelps, N. Y., to Pikeville, Ky. Canned kraut, 193.
- Philadelphia, Pa., to Cheboygan, Mich. Myrobalans, 437.
- Philadelphia, Pa., to Mississippi Valley territory and other points. Class rates, 107 (131).
- Philadelphia, Pa., to New Orleans, La. Automobile trucks, 588.
- Philadelphia, Pa., from North Baton Rouge, La. Paraffin wax, 702.
- Phillipsburg, Kans., to Salina, Kans., milled and reshipped as flour to New Orleans, La., for export. Wheat, 226.
- Phoenix, Ariz., from Crestmore, Colton, Oro Grande, Victorville, and Riverside, Calif., and El Paso, Tex. Cement, 758.
- Phoenix, Ariz., from El Paso, Tex., and defined territorial groups. Cereals, 452.
- Phoenix, Ariz., from Minneapolis, Minn. Barley flour, 81.
- Pikeville, Ky., from Phelps, N. Y. Canned kraut, 193.
- Pine Hill, Ala., to Selma, Ala. Lumber; joint rates, 563.
- Pinland, Fla., to Memphis, Tenn. Stock cattle, 593.
- Piper, Ala., to Fairfield, Ala. Coal, 50.
- Pipestone, Minn., from midcontinent oil field, Kans.-Okla. Petroleum products, 178.
- Pittsburg, Kans., from Fort Gibson, Okla. Sand, 601.
- Pittsburgh, Pa. Lumber; demurrage, 432.
- Pittsburgh, Pa. Terminal switching, 447.
- Pittsburgh, Pa., to southeastern and Mississippi Valley territories. Commodity rates, 306 (319).
- Plant City, Fla., to various destinations. Strawberries; estimated weights in pony refrigerators, 610.
- Plumas county, Calif., to Wabuska, Nev. Ore and concentrates, 477.
- Plymouth, Ohio. Standard time, 281.
- Port Gibson, Miss., from St. Louis, Mo. Commodity rates, 306.
- Portland, Me., from Hudson, N. Y. Cement, 21.
- Portland, Me., from Skowhegan, Me. Woolen yarn, 261.
- Portland, Oreg., from Chicago, Ill. Speedometers, speedometer heads, and speedometer connections; rating, 541.
- Portland, Oreg., to San Francisco, Calif., and other bay points. Sheep, 647.
- Portland, Oreg., to and from Washington. Class and commodity rates, 159.
- Portsmouth, Ohio, to Johnson City, Tenn. Class and commodity rates, 709.
- Post Pipe Spur, Ark., to Texarkana, Tex. Raw clay; minimum charge, 6.
- Potlatch, Idaho, to Cottonwood, Idaho. Brick, 699.
- Potomac Yard, Va., from New River district, W. Va., destined to Uniontown, D. C. Bituminous coal, 191.
- Pottsville, Pa., from Alabama. Yellow-pine lumber, 694.
- Prairie Home, Nebr. Grain; car distribution, 730.
- Prescott, Ariz., from Minneapolis, Minn. Barley flour, 81 (82).
- Prospect Hill, Mo., from Grand Rapids, Mich. Crushed gypsum rock, 662.
- Quay, Okla., from Parkersburg, W. Va. Wooden bull-wheel arms, cants, and pins, 568.
- 64 I. C. C.

- Rahway, N. J., from Virginia, North Carolina, and South Carolina. Box shooks, 389.
- Ranger, Tex., to Minden, Fraziers spur, Shreveport, and Gahagan, La. Iron and steel tanks and lumber, 532.
- Ranger, Tex., from Parkersburg, W. Va. Steel crown blocks, and steel calf-wheel and bull-wheel shafts, 154.
- Reading, Pa., from Virginia, North Carolina, and South Carolina. Box shooks, 389.
- Red Bank, Ohio, from Harveyton, Ky. Bituminous coal, 223.
- Redlands, Calif., from Minneapolis, Minn. Barley flour, 81.
- Reno, Nev., to San Francisco, Calif., and other points. Sheep, 647.
- Renwick, Ill., to Chicago switching district. Sand and gravel, 37.
- Retsof, N. Y., to Carney's Point, Gibbstown, and Paulsboro, N. J. Salt, 14.
- Rhode Island from Alabama. Yellow-pine lumber, 694.
- Richmond, Va., to Kannapolis, N. C. Sulphuric acid, 183.
- Richmond, Va., from southeastern territory. Lumber and products, 591.
- Riderwood, Ala., to Norfolk & Western Ry. points. Lumber and products, 591.
- Rincon, N. Mex., to and from El Paso, Tex. Class rates, 526.
- Rio Puerco, N. Mex., to and from El Paso and other Texas points. Class rates, 526.
- Riton, Wis., to Chicago switching district. Sand and gravel, 37.
- Riverdale, Ill., from Illinois and Indiana. Brick, 273.
- Riverside, Calif., to Arizona. Cement, 758.
- Rives, Tenn., from St. Louis, Mo. Commodity rates, 306.
- Roanoke, Va., from Delaware, Lackawanna & Western R. R. points. High explosives, 10.
- Rochester, N. Y., from Alabama. Yellow-pine lumber, 694.
- Rockford, Ill., to Chicago switching district. Sand and gravel, 37.
- Rock Springs, Wyo., to Nezperce, Idaho. Coal, 699.
- Rolling Fork, Miss., from St. Louis, Mo. Commodity rates, 306.
- Rome, N. Y., from Anaconda and Black Eagle, Mont. Copper bars, 136.
- Rome, N. Y., to Perth Amboy, N. J. Copper bars, 691.
- Rose Hill, Ill., from Eldnar Mine and Cantine, Ill. Lump coal, 73.
- Rosewood, La., to Natchez, Miss. Oats, 199.
- Ruleville, Miss., from St. Louis, Mo. Commodity rates, 306.
- St. Albans, Vt., from Hudson, N. Y. Cement, 21.
- St. Bernard, Ohio, from Sweetwater, Tenn. Sulphate of barium, 755.
- St. Charles, Va., to Charleston Mining and Manufacturing Co., Fla. Coal, 553.
- St. Johnsbury, Vt., from Hudson, N. Y. Cement, 21.
- St. Joseph, Mo., from Texas ports. Green and roasted coffee, 26 (32).
- St. Louis, Mo., from Iowa and Minnesota. Scrap paper, rags, and old rope, 607.
- St. Louis, Mo., to Johnson City, Tenn. Class and commodity rates, 709.
- St. Louis, Mo., to official classification territory. Floor-sweeping compound; rating, 299.
- St. Louis, Mo., from St. Paul, Minn. Coke, 441.
- St. Louis, Mo., to southeastern and Mississippi Valley territories. Commodity rates, 306.
- St. Paul, Minn., from Haggart, N. Dak. Fresh meat, 615.
- St. Paul, Minn., to St. Louis, Mo. Coke, 441.
- Salina, Kans., to New Orleans, La., and Galveston, Tex., for export. Flour, 226.
- Salt Lake City, Utah, from Spokane, Wash. Fresh meat, 173.
- San Antonio, Tex., from Somerset, Tex. Gasoline, 197.
- Sanders, Ariz., to and from El Paso and other Texas points. Class rates, 526.

- San Diego, Calif. Free time, 400.
- San Diego, Calif., from Chicago, Ill. Speedometers, speedometer heads, and speedometer connections; rating, 541.
- San Diego, Calif., from Minneapolis, Minn. Barley flour, 81 (82).
- San Francisco, Calif. Free time, 400.
- San Francisco, Calif., from Chicago, Ill. Speedometers, speedometer heads, and speedometer connections; rating, 541.
- San Francisco, Calif., from Idaho, Oregon, Nevada, and California. Sheep, 647.
- San Francisco, Calif., from Minneapolis, Minn. Barley flour, 81.
- San Francisco, Calif., to New York, N. Y., and Chicago, Ill. Straw braid and hemp braid, 429.
- San Francisco bay points from Idaho, Oregon, Nevada, and California. Sheep, 647.
- San Pedro, Calif. Free time, 400.
- Santa Rita, N. Mex., to and from El Paso, Tex. Class rates, 526.
- Sault Ste. Marie, Ont., to the west and southwest. Newsprint paper, 33.
- Sawyer, N. H., from Skowhegan, Me. Woolen yarn, 261.
- Scott City, Kans., to Salina, Kans., milled and reshipped as flour to Galveston, Tex., for export. Wheat, 226.
- Scottsville, Tex., to Mansfield, La. Pipe and oil well machinery, 665.
- Seattle, Wash., to Chicago, Ill. Antimony, 605.
- Seattle, Wash., from Chicago, Ill. Speedometers, speedometer heads, and speedometer connections; rating, 541.
- Seattle, Wash., from Everett and Tacoma, Wash. Vegetable oils, 585.
- Seattle, Wash., from Granby, Mo., for export. Pig lead, 4.
- Seattle, Wash., from Louisville, Ky. Peanut oil, 426.
- Seattle, Wash., to New York, N. Y., and Chicago, Ill. Straw braid and hemp braid, 429.
- Seattle, Wash., to and from Oregon and Vancouver, B. C. Class and commodity rates, 159.
- Seattle, Wash., from Painesville, Ohio, for export. Soda ash, 599.
- Selma, Ala., from Alabama. Lumber; joint rates, 563.
- Shaniko, Oreg., to San Francisco, Calif., and other bay points. Sheep, 647.
- Sheridan, Wyo., to Buffalo, Wyo. Brick, 485.
- Shreveport, La., from Jenks and Morris, Okla., Ranger, Tex., and Elmwood Place and Ivorydale, Ohio. Iron and steel tanks and lumber, 532.
- Shreveport, La., from Omaha, Nebr. Commodity rates, 306 (337).
- Shreveport, La., from Parkersburg, W. Va. Wooden bull-wheel arms, cants, and pins, 568.
- Sidney, Mont., to Tacoma, Wash. Scrap iron, 305.
- Silver City, N. Mex., to and from El Paso, Tex. Class rates, 526.
- Sioux City, Iowa, from Sault Ste. Marie and Fort Frances, Ontario, and Minnesota, Michigan, and Wisconsin. Newsprint paper, 33.
- Sioux Falls, S. Dak., from Galveston, Tex., New Orleans, La., and other Gulf ports. Green and roasted coffee, 26.
- Skowhegan, Me., to Portland, Me., Sawyer, N. H., Boston and other points in Massachusetts, and New York, N. Y. Woolen yarn, 261.
- Slaughter, La., from St. Louis, Mo. Commodity rates, 306.
- Somerset, Tex., from San Antonio, Tex. Gasoline, 197.
- South Bay, Calif. Free time, 400.
- South Carolina from Milton, Pa. Empty tank cars, 637.
- South Carolina to Nashville, Tenn. Commodity rates, 306 (340).

- South Carolina to New York, New Jersey, Pennsylvania, and other eastern states. Box shooks, 389.
- South Carolina to and from North Carolina. Class rates, 264.
- South Chicago, Ill., from Baker, Oreg. Chrome iron ore, 297.
- South Dakota from Galveston, Tex., New Orleans, La., and other Gulf ports
Green and roasted coffee, 26.
- South Dakota from Illinois mines. Bituminous coal, 751.
- South Dakota from Sault Ste. Marie and Fort Frances, Ontario, and Minnesota, Michigan, and Wisconsin. Newsprint paper, 33.
- South Dakota to Washington, Oregon, Montana, Idaho, and Canada. Coarse grain, 461.
- Southeastern territory from eastern and Virginia cities. Class rates, 107 (132).
- Southeastern territory to Norfolk & Western Ry. points. Lumber and products, 591.
- Southeastern territory from Ohio and Mississippi river crossings, Missouri River points, and Gulf ports. Commodity rates, 306.
- South Elgin, Ill., to Chicago switching district. Sand and gravel, 37.
- Southern classification territory. Paper shopping bags; rating, 423.
- Southern territory from Gulf ports. Asphalt, 395.
- Southwestern territory from Sault Ste. Marie and Fort Frances, Ontario, and Minnesota, Michigan, and Wisconsin. Newsprint paper, 33.
- South Wilmington, Mass., from Skowhegan, Me. Woolen yarn, 261.
- South Yard, Kans., from Parkersburg, W. Va. Wooden bull-wheel arms, cants, and pins, 568.
- Spokane, Wash., to Salt Lake City, Utah. Fresh meat, 173.
- Springfield, Mass., from Hudson, N. Y. Cement, 21.
- Springfield, Mo., from Fort Gibson, Okla. Sand, 601.
- Springfield district, Ill., to Illinois, Indiana, Iowa, Minnesota, Wisconsin, Michigan, Nebraska, Kansas, North Dakota, South Dakota, and Missouri. Bituminous coal, 751.
- Spur No. 8, Minn., from Minneapolis, Minn. Garbage, 57.
- Standardville, Utah, to Nezperce, Idaho. Coal, 699.
- Stanton, N. Dak., to Hecla, S. Dak. Lignite coal, 59.
- Starksville, Miss., from Virginia cities. Class rates, 107 (120).
- Staunton, Ill., to Kansas City, Mo. Fine coal, 536.
- Steele, Ala., from Alabama. Yellow-pine lumber, 694.
- Steubenville, Ohio, to and from Pennsylvania and Ohio. Passenger fares, 517.
- Stillwater, Wash., from Portland, Oreg. Commodity rates, 159 (165).
- Storrs, Utah, to Nezperce, Idaho. Coal, 699.
- Streator, Ill., to Chicago, Ill. Brick and articles, 624.
- Stuart's Draft, Va., from southeastern territory. Lumber and lumber products, 591.
- Suffolk, Va., to New York, New Jersey, Pennsylvania, and other eastern states.
Box shooks, 389.
- Suffolk, Va., from southeastern territory. Lumber and products, 591.
- Sultan, Wash., from Portland, Oreg. Commodity rates, 159 (165).
- Superior, Nebr., to Arizona and California. Cereals, 452.
- Suwanee, N. Mex., to and from El Paso and other Texas points. Class rates, 526.
- Sweetwater, Tenn., to Cincinnati and St. Bernard, Ohio. Sulphate of barium, 755.
- Tacoma, Wash., to Grays Harbor and Willapa Bay points. Commodity rates, 159 (164).

- Tacoma, Wash., from Ladysmith, Wis., Kalamazoo, Mich., Hamilton and Urbana, Ohio, for export. Newsprint, book, and writing paper, 186.
- Tacoma, Wash., to New York, N. Y., and Chicago, Ill. Straw braid and hemp braid, 429.
- Tacoma, Wash., to Seattle, Wash. Vegetable oils, 585.
- Tacoma, Wash., from Sidney, Mont. Scrap iron, 305.
- Tempe, Ariz., from El Paso, Tex., and defined territorial groups. Cereals, 452.
- Tennessee to Memphis, Tenn., and Cairo, Ill. Hickory planks, billets, and fitches, 744.
- Tennessee to Norfolk & Western Ry. points. Lumber and products, 591.
- Tennessee to and from North Carolina. Class rates, 264.
- Texarkana, Tex., from Post Pipe Spur, Ark. Raw clay; minimum charge, 6.
- Texas to Boston, Mass. Wool and hair, 365.
- Texas to Hastings and Grand Island, Nebr. Fruits and vegetables, 748.
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ABSORPTION. *See also* SWITCHING.

Proposal of the Pennsylvania R. R. to reduce the amount of its absorption of switching charges of other carriers on grain and feed receiving transit at Toledo, Ohio, resulting in increased through charges to shippers, found not justified. Proposal to absorb certain switching charges on other traffic, resulting in reduced through charges, found justified. Absorption of Switching Charges at Toledo, Ohio, 8.

The burden of proof rests upon carriers to justify proposed increased through charges resulting from a reduction in the amount of switching charges they will absorb even though they need not have increased the amount of such absorption by more than a certain per cent under *Increased Rates, 1920*, 58 I. C. C., 220. *Id.* (9).

Practice of certain carriers of refusing to absorb switching charges on common brick from Glen View and Deerfield, Ill., to points in the Chicago switching district, while making such absorptions on other commodities found not unlawful. Such other commodities produce a much higher revenue and if exceptions were not made on traffic from the above points, carriers would not receive enough gross revenue to pay the terminal costs accruing to other lines. Furthermore, the Commission has recognized the propriety of various carriers reaching Chicago in excepting certain commodities and classes of traffic from the provisions of the Lowrey tariff. *Illinois Brick Co. v. Director General*, as Agent, 273.

Proposal to limit absorption of charges for switching and unloading grain and certain grain products at Galveston, Tex., on shipments from Minneapolis, Minn., when originating beyond and when for export, in so far as they make the terminal absorption on the comparatively small volume of tonnage from Minneapolis conform with those on the much larger volume from the Missouri River and from Nebraska, Kansas, Missouri, and Oklahoma, found justified. *Terminal Charges on Grain at Texas Ports*, 629.

An absorption of the charges of a common-carrier industrial line is essentially different from the allowance contemplated by section 15 of the act. *Cambria Steel Co. v. Director General*, 737 (742).

ACTUAL WEIGHT. *See* WEIGHT.

ADJACENT FOREIGN COUNTRY. *See* CANADA.

ADJUSTMENT OF RATES.

The whole adjustment of rates in the Mississippi Valley has been before the Commission and all fourth section relief over direct lines between New Orleans, La., and points north thereof, both east and west of the Mississippi River has been denied. To now grant such relief with respect to rates on coffee would, therefore, be inconsistent with the policy which has been pursued with respect to other rates in the same territory and would be inconsistent with the spirit and intent of the law. *Coffee from Galveston and other Gulf Ports*, 26 (30).

ADJUSTMENT OF RATES—Continued.

Upon investigation, grain, grain products, and hay, on the whole, found to be bearing such a disproportionate share of transportation charges as to stifle and burden the industry. Rates within western and mountain Pacific groups as defined in *Increased Rates, 1920*, 58 I. C. C., 220, found unjust and unreasonable for the future and reductions required. Rates on Grain, Grain Products, and Hay, 85.

Proposed changes in class rates, involving both increases and reductions, between points south of the Ohio River, including the Mississippi Valley, purporting to be in compliance with the Commission's orders in *Memphis-Southwestern Investigation*, 55 I. C. C., 515, and other cases, and designed to eliminate fourth section departures ordered removed, and at same time to standardize rates which have long been on a depressed basis, found justified in part only. Maximum bases prescribed and new schedules required to be filed in accordance therewith. Rates to, from, and between Points South of Ohio River, 107.

Proposed revision of commodity rates, involving both increases and reductions, designed to eliminate deviations from the long-and-short-haul provision of the fourth section of the act, in the construction of rates primarily affecting Mississippi Valley points and Nashville, Tenn., found not justified in certain instances and justified in others. Maximum bases prescribed. Rates to, from, and between Points South of Ohio River, 306.

Coarse-grain rates from groups F and G points in Minnesota, the Dakotas, Nebraska, Kansas, and Iowa, to points in Montana, Idaho, Oregon, and Washington, as increased on June 25, 1918, under general order No. 28 of the Director General to the wheat-rate basis, found unreasonable to extent they exceeded lower rate subsequently established when the coarse-grain and wheat rates were reduced to the special rate basis, as increased on the same date, applying from all points in the same groups. Reparation awarded. *Van Dusen Harrington Co. v. Director General*, as Agent, 461.

Upon further hearing, former reports 46 I. C. C., 527 and 50 I. C. C., 605, original finding that under the existing rate adjustment there is undue prejudice to Johnson City, Tenn., and undue preference of Bristol, Va.-Tenn., reaffirmed. Reasonable maximum bases prescribed. *Chamber of Commerce of Johnson City, Tenn., v. S. Ry. Co.*, 709.

ADMINISTRATIVE RULINGS. See TARIFF CIRCULAR 18-A; RULES OF PRACTICE.

ADVANCE IN RATES. See also DOUBLE INCREASE.

In General:

The percentage of increase under general order No. 28 of the Director General is not controlling if the resulting rate is not unreasonable. *Bedford Pulp & Paper Co. v. Director General*, as Agent, 219 (220). Disagreement between carriers over divisions no justification for an increase in rates. Refining in Transit of Copper Articles at Laurel Hill, N. Y., 257 (258).

Proposed cancellation of charges on c. l. traffic from interchange tracks in Topeka, Kans., to certain outlying industries and institutions adjacent thereto, which would result in application of higher rates published in road-haul tariffs which could not be absorbed by connecting lines at Topeka under their switching absorption rules, found not justified. *Interchange Switching at Topeka*, 259.

ADVANCE IN RATES—Continued.

In General—Continued.

Proposed reduction in free time allowed at California ports on freight originating in California, except within the switching limits of the port of exit, and consigned to destinations in this and foreign countries reached by water lines, found not justified when for application to shipments moving in interstate or foreign commerce, because if allowed it will have effect of restricting the service incident to traffic to Atlantic ports moving by competitive water routes. Decreased Free Time Allowance, 400.

Asphalt: Upon supplemental report, former report 64 I. C. C., 107, proposed increased rates on, from Gulf ports to main line and branch line points of the N., C. & St. L. Ry. east of Nashville, Tenn., found not justified. Proposed rates to main-line points between Nashville and Chattanooga, Tenn., are clearly in violation of the fourth section and record does not justify finding that rates to branch-line points for distances of from 250 to 300 miles less than the distance to Cincinnati, Ohio, should exceed, to extent proposed, the rate to that point and to stations on the main line of that carrier, now in effect, or which respondents must publish upon request under rule 77 of Tariff Circular 18-A. Asphalt from Gulf Ports, 395.

Bags, shopping, paper: Proposed increased ratings on, with handles, c.l. and l.c.l., in official, southern, and western classifications, found justified. Protestants are particularly interested in the mixture of paper shopping bags with ordinary paper bags but the general rule of the classification committee is to provide specific ratings based on classification characteristics of articles and not upon their mixing possibilities. Classification Rating on Paper Shopping Bags, 423.

Berries: Proposal of the American Railway Express Co., to increase the estimated weights on, in pony refrigerators, from points in Florida to destinations throughout the United States, found not justified as the practical and only effect of the proposed increases would be a substantial increase in transportation charges and respondent has not shown that the application of the existing rates to such estimated weights will not result in unreasonable charges to the shipper. Weights on Berries in Pony Refrigerators, 610.

Box shooks:

Proposed cancellation of specific rates on, from points in Virginia and the Carolinas, to destinations in New York and other eastern states and to substitute therefor the prevailing lumber rates, involving both increases and reductions and which would result in a disturbance of a long-standing relationship of rates between competing points at a time when the industry is seriously depressed, found not justified. Box Shooks from Southeast to Eastern Points, 389.

In *Rates on Lumber and Lumber Products*, 52 I. C. C., 598, the Commission included box shooks among the lumber articles as to which carriers were advised that they should observe as maxima the rates on lumber. Contention that a presumption of reasonableness attaches to proposed rates on shooks because they are made equal to the lumber rates, not sustained, as expressions in the above report clearly indicated that it was the Commission's intention to require in connection with rates on articles increased to the lumber basis a prior consideration of the propriety of the lumber rates. Id. (394).

ADVANCE IN RATES—Continued.

Class and commodity rates: Proposed revision of, in territory west of the Cascade Mountains extending from Portland, Oreg., on the south to Vancouver, B. C., on the north, involving both increases and reductions, found justified in part. Rates between North Pacific Coast Points, 159.

Class rates: Proposed increased class rates between El Paso, Tex., and points on lines of the Santa Fe west of Rincon and Belen, N. Mex., which would result in increases of 35 per cent over the corresponding rates of August 25, 1920, found not justified. Rates Between El Paso and New Mexico and Arizona, 526.

Coffee: Proposed increased rates on, from New Orleans, La., to Little Rock, Ark., and from the Texas gulf ports to lower Missouri River points, St. Joseph to Kansas City, Mo., found justified. Coffee from Galveston and other Gulf Ports, 26 (32).

Commodity rates: Proposed revision of, involving both increases and reductions, designed to eliminate deviations from the long-and-short-haul provision of the fourth section of the act, in the construction of rates primarily affecting Mississippi Valley points and Nashville, Tenn., found not justified in certain instances and justified in others. Maximum bases prescribed. Rates to, from and between Points South of Ohio River, 306.

Copper and lead: Proposed cancellation of refining-in-transit arrangements at Laurel Hill (Nichols siding), N. Y., on, moving all rail, from points west of Buffalo, N. Y., and Pittsburgh, Pa., and the refined product moving thence to New England destinations, which would result in the application of higher local rates on the refined product from Laurel Hill, found not justified. Proposed cancellation was the outgrowth of a disagreement between carriers over divisions which affords no justification for an increase in rates. Refining in Transit of Copper Articles at Laurel Hill, N. Y., 257.

Egg-box stuff and egg-case fillers: Proposed increased c. l. minimum on, from Missouri River points to interstate destinations in Kansas, from 24,000 to 30,000 pounds, which will establish throughout this territory a uniform description on these articles, found justified. Proposed minimum is satisfactory to the majority of shippers and can be loaded into a standard 36-foot car. Minimum Weight on Egg-Box Stuff and Egg-Case Fillers, 51.

Explosives: Proposal of the Norfolk & Western Ry. to eliminate the joint class rates on high explosives which now apply to stations on its line under exceptions to the classification, leaving higher combinations in effect, and to restrict the application of such rates to shipments moving to stations on the C. & O. and points beyond, found not justified as facts presented do not justify a departure from the joint class-rate basis prescribed in *Nitro Powder Co.*, 35 I. C. C., 77. Restrictions in Routing Explosives via N. & W. Ry., 10.

Extracts, flavoring: Proposed first-class rating on, moving by express in official classification territory, found not justified. Carrier contended that extracts are not articles of food or drink for which second-class rating was primarily established, but are food adjuncts, but since this commodity falls within the description of "food" as defined in section 6 of the food and drugs act of 1906, contention not sustained. Classification. Rating on Flavoring Extracts, 53.

ADVANCE IN RATES—Continued.

Fruits, fresh: Proposed changes in packing requirements, estimated weights, and weighing of eastbound transcontinental shipments of deciduous fresh fruits, which provide that if shipments are made in packages not conforming to the "standard railroad container," charges will be computed on basis of "actual" weight, determined by weighing at least five packages from each lot of the different kinds of fruit in other than standard packages, found not justified, as some species of a particular kind weigh more than others and irregular packages of heavier fruit would thus be subjected to a higher charge because of excess over estimated weight specified in the tariff. Packing Requirements of Deciduous Fresh Fruits, 539.

Fruits and vegetables: Proposed increased rates on, from points in Texas to Hastings and Grand Island, Nebr., found not justified. Fruits and Vegetables to Hastings, 748.

Grain and feed: Proposal of the Pennsylvania R. R. to reduce the amount of its absorption of switching charges of other carriers on grain and feed receiving transit at Toledo, Ohio, resulting in increased through charges to shippers, found not justified. Absorption of Switching Charges at Toledo, Ohio, 8.

Grain and products: Proposed withdrawal of alfalfa feed, cane seed, cottonseed cake and meal, dried beet pulp, and other grain and grain products from list of articles taking corn rates, in western trunk line territory, and including them in list of articles taking wheat rates, found not justified. Since proceeding instituted the Commission in 64 I. C. C., 85, reduced the rates on coarse grains and if suspended schedules are permitted to become effective rates on commodities named will be higher than on corn and other coarse grains with which they are in active competition, thus disturbing the long-standing parity in rates. Classification Exceptions in Western Trunk Line Territory, 613.

Lumber:

Proposed cancellation of interstate commodity rate on, from North Tonawanda to Canandaigua, N. Y., leaving in effect higher class rate which would contravene the long-and-short-haul provision of the fourth section of the act, found not justified. Lumber from North Tonawanda to Canandaigua, 530.

Proposed cancellation of joint rates on, and articles taking lumber rates from points on the Alabama & North Western to Selma, Ala., leaving higher combination in effect, found not justified. Lumber to Selma from Alabama & North Western R. R., 563.

Lumber and other commodities: Proposed increase in rates on, between El Paso, Tex., and points in Oregon, Washington, Utah, and Idaho, from 25 to 33½ per cent over rates in effect on August 25, 1920, for purpose of restoring El Paso to transcontinental group H, found not justified. Lumber Rates between El Paso and Western Points, 12.

Lumber and products: Proposal to make inapplicable the intermediate clause on, from southeastern territory when destined to local points on the Norfolk & Western, which would result in higher combination rates and violations of the long-and-short-haul provision of section 4 of the act, found not justified. Lumber from Southeast to N. & W. Points, 591.

ADVANCE IN RATES—Continued.

Oil, crude petroleum: Proposal to increase the estimated weight on, in tank car loads, from Texas to interstate points, as a result of investigations conducted by carriers and representatives of the industry, without a corresponding change from producing points in Kansas and Oklahoma, found not justified. Estimated Weight on Petroleum Crude Oil from Texas, 545.

Ore, chrome iron: Following *Maltby Case*, 63 I. C. C., 103, chrome ore found to be a commodity distinct from and more valuable than iron ore, and mere fact that it was subjected to a different measure of increase than iron ore under general order No. 28 of the Director General, does not establish the unreasonableness of the rate charged. *Maltby v. Director General*, as Agent, 297.

Paper, rags, and old rope, scrap: Proposed increased rates on, in straight or mixed carloads, from certain points in northern Iowa and southeastern Minnesota to Chicago and Peoria, Ill., St. Louis, Mo., and points taking same rates; also from Mason City, Iowa, to Mississippi crossings on traffic destined east of the Illinois-Indiana state line, designed to correct certain maladjustments and which are low in comparison with rates from other groups for similar hauls, found justified. Scrap Paper between Western Points, 607.

Pebbles, flint:

Rates on imported flint pebbles, which were subjected to an increase of 25 per cent under general order No. 28 of the Director General, found not unreasonable as compared with rates on other commodities which were accorded a flat increase under the terms of that order and with which flint pebbles do not compete. *Silica Sand Producers Traffic Assn. v. C. & Q. R. R. Co.*, 302.

Contention that increase of 25 per cent made on June 25, 1918, in the rates on flint pebbles was contrary to the provisions of general order No. 28, and that there was no justification or authority for imposing a greater increase on flint pebbles than on sand and gravel, which were accorded a flat increase of 1 cent per 100 pounds. *Held*: The term "sand and gravel," as ordinarily used and as used in general order No. 28, would not include grinding pebbles, a higher-grade commodity serving a different purpose, and the reasonableness of rates can not be determined by a construction of that order. *Id.* (304).

Pipe and pipe connections, cast iron: Proposed cancellation of existing basis for rates on, from certain points in Tennessee and Alabama to Montana destinations, and application in lieu thereof of the normal basis of combination rates on St. Louis, Mo., so as to permit the traffic to move under the same rates through the different gateways, found justified. Proposed rates compare favorably with rates on cast-iron pipe and on other iron and steel articles from Pittsburgh, Pa., Columbus, Ohio, and Chicago, Ill., to the same Montana destinations. Cast-Iron Pipe from Birmingham, 638.

Sand and gravel: Proposed increased rates on, from Michigan City, Ind., to Johnstown-Connellsville territory in Pennsylvania and West Virginia, found justified, as they reflect the same percentage of increase over the rates in effect prior to *Increased Rates, 1920*, 58 I. C. C., 220, as has been made in the rates from all other sand-producing points in central territory, and they would be properly related to the present rates from such other points. Sand and Gravel from Michigan City, 512.

ADVANCE IN RATES—Continued.

Stone, ground or powdered: Proposal of the L. & N. R. R. to cancel its concurrence in joint interstate rates on, from Bridgeport and Mascot, Tenn., to stations on its line, leaving in effect higher combinations of local class rates, found not justified. Stone from Bridgeport and Mascot to L. & N. Stations, 515.

Storage in transit charges: Proposed increased charge for storage in transit in the eastern and western groups of apples and pears, moving in transcontinental traffic, found not justified. Only justification offered is that the proposed charge should have been increased to basis sought following *Increased Rates, 1920*, 58 I. C. C., 220, but as the time limitation prescribed in that case had expired prior to the filing and effective date of the suspended schedules, justification of the increase must be based upon other foundations. Storage Charges on Apples and Pears, 627.

Switching charges:

Increased charges resulting from the refusal of trunk line carriers to pay an allowance to complainant or its industrial line for terminal switching and spotting to and from its plant at Pittsburgh, Pa., while performing like services without additional charge for other industries in the same district, found to have resulted in unreasonable charges but not in undue prejudice by reason of uncertainty as to whether competitors were similarly circumstanced as to operating conditions. Reparation awarded from earliest date within the period of the statute of limitations down to the date when such allowances were again restored. *Oliver Iron & Steel Co. v. P. & L. E. R. R. Co.*, 447.

Proposed increased charge and minimum weight for switching interstate shipments between team tracks of the Chicago & Eastern Illinois and junctions with connecting lines at Chicago, Ill., when from or to points beyond the Chicago switching district, found justified, as there is no evidence tending to show that respondent should be required to maintain a lower charge or minimum than is applied generally by other trunk lines in the same district for a like kind of service. Switching at C. & E. I. Team Tracks, 500.

Proposed increase in switching charges at Attica, N. Y., where the switching line or a connection receives a line haul, found justified in part. Switching Charges at Attica, 582.

Terminal charges: Proposal to limit absorption of charges for switching and unloading grain and certain grain products at Galveston, Tex., on shipments from Minneapolis, Minn., when originating beyond and when for export, in so far as they make the terminal absorption on the comparatively small volume of tonnage from Minneapolis conform with those on the much larger volume from the Missouri River and from Nebraska, Kansas, Missouri, and Oklahoma, found justified. Terminal Charges on Grain at Texas Ports, 629.

Tractors, garden: Proposed I. c. l. ratings and increased carload minimum on, in official, western, and southern classification territories, found justified. More tractors made by protestant are sold in carloads than in less-than-carloads, and record shows that all other garden tractors load up to and in excess of the proposed minimum. Carload Minimum Weight on Garden Tractors, 1.

ADVANCE IN RATES—Continued.

Yarn, woolen: Proposed cancellation of any-quantity rates on, from Skowhegan, Me., to interstate destinations, and application of first-class rates in lieu thereof, found not justified and contrary to the principle in *New England Dry Goods*, 49 I. C. C. 147, that so long as commodity rates on piece goods are maintained a similar basis should not be denied to manufacturers of wholly or partly finished cloth. Woolen Yarn from Skowhegan to Boston, 261.

ADVANTAGES AND DISADVANTAGES. *See* LOCATION.

AFFIDAVIT.

Upon supplemental report, proof having been submitted and defendants having agreed to accept an affidavit covering certain shipments, reparation awarded certain interveners upon shipments on which charges were paid at rates found unreasonable in second supplemental report, 57 I. C. C., 584. Original and first supplemental reports, 37 I. C. C., 652 and 53 I. C. C., 741. Cotton Mfrs. Asso. of S. C. v. C., C. & O. Ry., 633.

Affidavits offered in evidence by certain complainants to a proceeding to show that they made shipments and paid and bore the charges thereon were objected to by defendants upon ground that they were not accorded the right of cross-examination. *Held*: As to such complainants reparation denied. *Stewart-Warner Speedometer Corp. v. Director General*, as Agent, 541 (544); *United Iron Works v. Director General*, as Agent, 601 (604).

Complainant, in complying with rule V of the Commission's Rules of Practice, authorized to include in reparation statement details of shipments made subsequent to hearing accompanied by proof in the form of an affidavit that it made the shipments and paid and bore the freight charges thereon, with understanding that if carriers object to proof in affidavit form they may request further hearing with respect to reparation. *Indian Packing Corp. v. Director General*, as Agent, 205 (210).

AGENT.

That a carrier may by contract employ the owner of property transported to perform a portion of the transportation service is recognized by section 15 of the act. The effect of such a contract is to determine the amount to be paid for the services rendered. The Commission's duty is to take care lest the sum paid becomes so large as to amount to an unlawful concession from the transportation rate; and it may determine what is a reasonable charge as the maximum to be paid by the carrier, and fix the same by appropriate order. *Cambria Steel Co. v. Director General*, 737 (740-741).

Contention that as carriers during federal control were being operated as a unified system by the Director General, that the agent of a carrier was the agent of the Director General, and as such it was his duty to telegraph request for diversion to the last gateway through which he knew the traffic would pass, *Held*: Not sustained as it was not the purpose of the federal control act or of the orders of the Director General in operating under that act to alter or nullify the rates and other provisions of the lawful tariffs. *Du Pont de Nemours & Co. v. Director General*, as Agent, 667 (670).

AGGREGATE OF INTERMEDIATES. *See* THROUGH AND LOCAL.

AGREEMENT. *See also* **CONTRACT.**

Fact that keen market competition exists which has influenced the making of rates in the past, and the further fact that parties are practically agreed that complete fourth section relief should be granted are not in themselves sufficient to justify such action on the part of the Commission. *Coffee from Galveston and other Gulf Ports*, 26 (29-30).

ALLOWANCES.

Increased charges resulting from refusal of trunk line carriers to pay an allowance to complainant or its industrial line for terminal switching and spotting to and from its plant at Pittsburgh, Pa., while performing like service without additional charge for other industries in the same district, found to have resulted in unreasonable charges but not in undue prejudice by reason of uncertainty as to whether competitors were similarly circumstanced as to operating conditions. Reparation awarded from earliest date within the period of the statute of limitations down to the date when such allowances were again restored. *Oliver Iron & Steel Co. v. P. & L. E. R. R. Co.*, 447.

Defendant's denial to complainant of an allowance for spotting cars within its plant at Johnstown, Pa., equal to the cost of such service, not shown to have subjected complainant to the payment of unreasonable rates, or to undue prejudice as compared with services and allowances accorded competitors at various points. *Cambria Steel Co. v. Director General*, 737.

That a carrier may by contract employ the owner of property transported to perform a portion of the transportation service is recognized by section 15 of the act. The effect of such a contract is to determine the amount to be paid for the services rendered. The Commission's duty is to take care lest the sum paid becomes so large as to amount to an unlawful concession from the transportation rate; and it may determine what is a reasonable charge as the maximum to be paid by the carrier, and fix the same by appropriate order. *Id.* (740-741).

The Commission is without power to require carriers to pay allowances to shippers for spotting. *A fortiori*, it can not compel a carrier to increase an allowance of this kind on the sole ground that it is inadequate to cover the cost to the shipper whom it has employed to perform the particular service. *Id.* (741).

A division out of a joint rate or an absorption of the charges of a common-carrier industrial line is essentially different from the allowance contemplated by section 15 of the act. *Id.* (742).

ANALOGOUS ARTICLES. *See also* **COMPARATIVE RATES.**

Double first-class rate applicable on life-saving apparatus, oxygen, l. c. l. and by analogy assessed on a c. l. shipment of damaged gas masks found unreasonable to extent it exceeded rating of first class, applicable on component parts thereof and other articles, which lower rate was subsequently established on gas masks. Reparation awarded. *Houston Chamber of Commerce v. Director General*, as Agent, 181.

Fact that carriers have accorded to one article a basis of rates below normal is of itself no reason, in the absence of unjust discrimination or undue prejudice, for requiring the establishment of the same rates on analogous articles, especially where shipper is directly benefited by the lower basis of rates already in effect. *Pioneer Pole & Shaft Co. v. Director General*, as Agent. 744 (746).

ANY QUANTITY RATES. *See also* LESS THAN CARLOADS.

Proposed cancellation of, on woolen yarn from Skowhegan, Me., to various interstate destinations, and application of first-class rates in lieu thereof, found not justified and contrary to the principle in *New England Dry Goods*, 49 I. C. C., 147, that so long as commodity rates on piece goods are maintained a similar basis should not be denied to manufacturers of wholly or partly finished cloth. Woolen Yarn from Skowhegan to Boston, 261.

APPREHENSIONS OF PARTIES.

Contention that it is impracticable to single out individual items for special treatment, and that a reduction in the rating will inevitably be followed by demands for similar treatment of similar commodities, *Held*: Reason insufficient for refusing to accord a reasonable rating and if other articles are entitled to similar treatment, they should have it. *Indian Packing Corp. v. Director General*, as Agent, 205 (210).

ARBITRARIES. *See also* DIFFERENTIALS.

Rates on common salt from points in New York to Carney's Point, Gibbstown, and Paulsboro, N. J., constructed by the addition of a 5 cent arbitrary over the rates to Philadelphia, Pa., found not unreasonable as compared with rates to Marcus Hook, Pa., Wilmington, Del., Baltimore, Md., and other competitive points taking the Philadelphia basis of rates. *Du Pont de Nemours & Co. v. Director General*, as Agent, 14.

BASING POINT RATES.

Under ordinary conditions the practice of making through rates by adding to a rate for a long distance the full local rate from the basing point to destinations a relatively short distance beyond disapproved. *Edwards & Bradford Lumber Co. v. Director General*, as Agent, 503 (506).

BELT LINE.

Upon further hearing, charges for transportation of live stock from stockyards of the Belt R. R. & Stock Yards Co. at Indianapolis, Ind., to the plant of Kingan & Co., Inc., at that place, found not to result in undue preference of persons or localities in intrastate commerce, undue prejudice to persons or localities in interstate commerce, or in unjust discrimination against interstate commerce. Former report, 60 I. C. C., 337 modified so as to except such charge from its provisions. *Indiana Rates, Fares, and Charges*, 645.

BILLS OF LADING. *See also* EXPORT BILL OF LADING.

Carriers challenge the Commission's power to do more than prescribe the "form" as distinguished from the substance of bill of lading, but such interpretation would imply that each carrier could insert its own peculiar phraseology in its bill of lading. Intention of Congress to have a uniform bill of lading prescribed by the Commission is clearly indicated in section 25, under which the Commission is also required to "preserve for carriers by water the protection of limited liability provided by law," and this can not be done by specifying color of paper or size of type. *Export Bill of Lading*, 347 (352).

It would be difficult, if not impossible, to prevent the unjust discrimination and undue prejudice forbidden by the act if carriers could vary the terms of the contract of transportation at will in dealing with different shippers of the same commodity. *Id.* (352).

The conditions of a bill of lading regarding the liability of the carriers affect "the value of the service rendered to the * * *, shipper, or consignee" within the meaning of section 6 of the act. *Id.* (352).

BILLS OF LADING—Continued.

The courts determine the validity of provisions in bills of lading just as they do in the case of other contracts and do not consider whether or not particular provisions, not contrary to the law, should be included or omitted. The Commission must deal with the terms of the bill of lading as rules and regulations which affect the value of the service rendered to the shipper in the same way as it is affected by rules and regulations published in the carriers' tariffs. Id. (353).

Viewed as an administrative matter, the question of what rules and regulations are or will be reasonable in connection with transportation covered by a bill of lading, depends principally upon the adjustment of the carrier's compensation to the degree of risk, reflected in operating expenses, which it incurs. The fair return as contemplated in section 15a of the act must also be borne in mind. Id. (354).

Upon further hearing, rules and regulations made in *Bills of Lading*, 52 I. C. C., 671, prescribing form of uniform domestic bill of lading and live stock contract modified to conform to the requirements of the interstate commerce act as amended by the transportation act, 1920. Domestic Bill of Lading and Live Stock Contract, 357.

Forms of uniform "straight" and "order" bills of lading proposed by The National Industrial Traffic League. Appendix A. Id. (357).

Supplement No. 11 to consolidated freight classification No. 1, publishing the ratings, rules and regulations of the official, southern and western classifications. Appendix B. Id. (357).

Form of domestic (straight) bill of lading prescribed by the Commission. Appendix D. Id. (357).

Form of uniform live stock contract proposed by representatives of carriers and shippers. Appendix E. Id. (357).

Form of uniform live stock contract prescribed by the Commission. Appendix F. Id. (357).

Suggestions made on behalf of various steamship lines, operating in the coastwise service, which would have the effect of limiting the liability of such carriers by inserting in the uniform bill of lading prescribed by the Commission, certain water-line clauses. Appendix C. Id. (360).

BLANKET RATES. See also GROUP RATES.

Failure of carriers to extend the blanket rates to Ucross and Buffalo, Wyo., on the line of the Wyoming Ry., on lumber and lumber products moving from points in Idaho, Montana, and Washington, while maintaining such blanket rates to other more distant points in the blanket territory on carriers' main and branch lines or on independent connecting lines, found to result in undue prejudice. Reparation denied and nonprejudicial rates prescribed. *Pioneer Lumber Co. v. Director General*, as Agent, 485.

Where a trunk line carrier publishes the same blanket rate on a specific commodity to destinations located over a considerable stretch of its main line and also extends that rate to points located on its branch lines, a shipper situated on an independent branch line connecting with this blanketed stretch of the main line is entitled to the blanket rate, especially where the service over the independent branch line is not in excess of the average service over the trunk line's own branches. Id. (489).

BOAT LINES. See WATER CARRIERS.

BOTH DIRECTIONS.

Where transportation conditions affecting the movement in opposite directions between the same points are substantially similar there should be no disparity in the rates. Rates to, from and between Points South of Ohio River, 107 (133).

Rate on a sporadic shipment of coke from St. Paul, Minn., to St. Louis, Mo., found not unreasonable as compared with lower rate in the opposite direction, which lower rate was subsequently established in both directions, as neither the voluntary reduction of a rate, nor the existence of a lower rate in the opposite direction is of itself a sufficient ground upon which to base a finding of unreasonableness. *Mississippi Valley Iron Co. v. C. & B. & Q. R. R. Co.*, 441.

Fifth-class rates on iron tanks, k. d., from Cushing, Okla., to Central City, Ohio, and Morgantown, W. Va., found not unreasonable as compared with lower commodity rates maintained in the opposite direction in which there is a regular movement. *Pure Oil Co. v. Director General*, as Agent, 444.

Class rates applying on sporadic shipments can not be condemned merely because commodity rates are maintained in the opposite direction in which there is a regular movement. *Id.* (445).

A rate in one direction higher than in the opposite direction does not demonstrate the unreasonableness of such higher rate. *Raritan Copper Works v. Director General*, as Agent, 691 (692).

BOUNDARY LINE.

It is one thing to give consideration to the condition of all competing carriers in fixing rates between competitive points on a reasonable basis, but quite a different matter to lift the entire rate structure of an important territory solely for the purpose of enabling carriers operating through a different and higher-rated territory to compete at border points with the carriers operating within that territory on a rate equality without reducing the rates at intermediate points in such higher-rated territory. Rates to, from, and between Points South of Ohio River, 306 (329).

BRANCH LINE POINTS.

Failure of carriers to extend the blanket rates to Ucross and Buffalo, Wyo., on the line of the Wyoming Ry., on lumber and lumber products moving from points in Idaho, Montana, and Washington, while maintaining such blanket rates to other more distant points in the blanket territory on carriers' main and branch lines or on independent connecting lines, found to result in undue prejudice. Reparation denied and nonprejudicial rates prescribed. *Pioneer Lumber co. v. Director General*, as Agent, 485.

Where a trunk line carrier publishes the same blanket rate on a specific commodity to destinations located over a considerable stretch of its main line and also extends that rate to points located on its branch lines, a shipper situated on an independent branch line connecting with this blanketed stretch of the main line is entitled to the blanket rate, especially where the service over the independent branch line is not in excess of the average service over the trunk line's own branches. *Id.* (489.)

BURDEN OF PROOF. *See also* **PROOF.**

Rests upon carriers to justify proposed increased through charges resulting from a reduction in the amount of switching charges they will absorb even though they need not have increased the amount of such absorption by more than a certain per cent under *Increased Rates, 1920*, 58 I. C. C., 220. Absorption of Switching Charges at Toledo, Ohio. 8 (9).

CANADA.

Rates on cement from Hudson, N. Y., to certain New England destinations not shown unreasonable or otherwise unlawful as compared with rates from Montreal, Canada, to the same destinations. *Atlas Portland Cement Co. v. G. T. Ry. Co. of C.*, 21.

The Commission has jurisdiction of the rates on shipments from points in the United States to points in Canada only so far as the movement was within the United States. *Van Dusen Harrington Co. v. Director General*, as Agent, 461.

CAR DISTRIBUTION.

Practice of carrier in distributing cars on basis of actual amount of grain on hand in elevator and ready for shipment, and refusing to take into consideration grain in the country adjacent to complainant's elevator, found not to result in unjust discrimination. *Farmers Grain Co. v. C., R. I. & P. Ry. Co.*, 730.

Practice of carriers in distributing empty cars among lumber shippers by refusing to apportion available cars upon basis of ability of shippers to promptly load, as determined by production and accumulated stock on hand, and apportioning such cars upon basis of past performance during periods of normal car supply, found not to have resulted in undue prejudice or discrimination. *Wausau Southern Lumber Co. v. G. & S. I. R. R. Co.*, 732.

It is the duty of a carrier to furnish transportation upon reasonable request therefor, and not to unjustly discriminate as between shippers in the distribution of cars. This duty, however, only applies when the commodity tendered for shipment is actually on hand and conveniently located for prompt loading. *Id.* (736).

It is just as necessary to maintain a proper relationship for car distribution between shipping points, districts, and railroad divisions as it is to maintain a proper relationship between individual shippers. *Id.* (736).

CAR FURNISHING.

A lower rate is justified on shipments moving in equipment furnished by shippers than would be reasonable for shipments moving in carrier's equipment. *Missouri Portland Cement Co. v. Director General*, as Agent, 243 (246).

Proposed rule, applicable in official classification territory, providing that where carrier is unable to furnish the number of double-deck cars ordered for the transportation of hogs, for the substitution of single-deck cars in accordance with a table of equivalents, found not justified with respect to orders for double-deck cars in excess of 20. *Substitution of Single-Deck for Double-Deck Cars*, 251.

CARLOAD AND LESS THAN CARLOAD.

L. c. l. class rates on steel crown blocks and steel calf-wheel and bull-wheel shafts, in carloads, found unreasonable to extent they exceeded commodity rates on oil-well supplies in mixed carloads. Reasonable maximum relationship of rates prescribed and reparation awarded. *Parkersburg Rig & Reel Co. v. Director General*, as Agent, 154.

CARLOAD AND LESS THAN CARLOAD—Continued.

Steel crown blocks are manufactured specially as integral parts of oil-drilling outfits and are not adapted to other uses. If they are parts of oil-well outfits when shipped l. c. l., their movement in carloads does not alter their character. There is no dissimilarity in the transportation characteristics which warrant application of a higher basis of rates when they move in straight carloads than when shipped in mixed carloads with other oil-well supplies. *Id.* (155).

CAR MILE EARNINGS. *See* EARNINGS.

CARRIER COMPETITION. *See* COMPETITION.

CARS MOVING ON OWN WHEELS.

Following *Aetna Explosives Co.*, 52 I. C. C., 235, charges assessed on new empty tank cars moving on their own wheels from Milton, Pa., to various destinations in the Carolinas found illegal to extent they exceeded the combination of rates based on official and southern classification ratings to and from Lynchburg and Petersburg, Va. Refund directed. *Proctor & Gamble Co. v. Director General, as Agent*, 637.

CAR SPOTTING. *See* SPOTTING CARS.

CHARACTERISTICS OF COMMODITY.

Transportation charges constitute a large proportion of the finally delivered price of hay, much of which customarily moves considerable distances. The character, value, volume, and use of this commodity are such as to require relatively low charges for its carriage. Rates on Grain, Grain Products, and Hay, 85 (89).

CHICAGO SWITCHING DISTRICT.

Rates on sand, slag, and crushed stone from Joliet and Thornton, Ill., to the Chicago switching district and from and to points within the district found not unjustly discriminatory or unduly prejudicial to interstate transportation of sand and gravel to the district. *Chicago Sand & Gravel Producers v. Director General, as Agent*, 37.

Rates on sand and gravel from Illinois points in the outer zone to the Chicago switching district found unduly prejudicial to the interstate transportation of sand and gravel from Wisconsin points to the Chicago district. Nonprejudicial basis of rates prescribed and reparation denied. *Id.* (49).

Rates on common brick from points outside the Chicago switching district to points within said district found not unreasonable but unduly prejudicial to extent they exceed the rates from points inside of that district to interstate destinations therein by more than 10 cents per net ton. Nonprejudicial basis of rates prescribed and reparation denied. *Illinois Brick Co. v. Director General, as Agent*, 273.

Practice of certain carriers in refusing to absorb switching charges on common brick from Glen View and Deerfield, Ill., to points in the Chicago switching district, while making such absorptions on other commodities found not unlawful. Such other commodities produce a much higher revenue and if exceptions were not made on traffic from the above points carriers would not receive enough gross revenue to pay the terminal costs accruing to other lines. Furthermore, the Commission has recognized the propriety of various carriers reaching Chicago in excepting certain commodities and classes of traffic from the provisions of the Lowrey tariff. *Id.* (273).

CHICAGO SWITCHING DISTRICT—Continued.

Limits of, determined under the Lowrey tariffs many years ago as the result of prolonged conference and negotiation between carriers and shippers should not be reconstructed by the Commission on the record in the instant case. *Id.* (278).

Proposed rule eliminating the state of Illinois, and that portion of Indiana lying within the Chicago switching district, from the territory in which carriers' protective service against cold is now available, found not justified as the extension and development of the service, originally proposed and strongly urged by the Commission in *Perishable Freight Investigation*, 56 I. C. C., 449, would be extremely unlikely. Heater Service for Fresh Fruits and Vegetables, 283.

Proposed increased charge and minimum weight for switching interstate shipments between team tracks of the Chicago & Eastern Illinois and junctions with connecting lines at Chicago, Ill., when from or to points beyond the Chicago switching district, found justified, as there is no evidence tending to show that respondent should be required to maintain a lower charge or minimum than is applied generally by other trunk lines in the same district for like kind of service. Switching at C. & E. I. Team Tracks, 500.

CIRCUITOUS ROUTES. *See also* OUT-OF-LINE HAUL.

By the transportation act, 1920, if authority is granted a circuitous line to meet the charges of a more direct line at competitive points and maintain higher charges at intermediate points, "the authority shall not include intermediate points as to which the haul of the petitioning line or route is not longer than that of the direct line or route between the competitive points." While this limitation does not apply in terms to relief granted because of market competition, the Commission has felt that in exercising its discretion under the law the same principle should be applied, believing that the same reasons for such a limitation exists in the one case as in the other. Coffee from Galveston and other Gulf ports, 26 (30).

Fourth section relief granted lines whose routes are not less than 15 per cent longer to a common destination than the direct route, with the limitation that the authority shall not include intermediate points as to which the haul of the line which is granted relief is not longer than that of said direct route to the common destination. *Id.* (32).

Carriers operating circuitous routes where the distances exceed the short-line distance by more than 15 per cent authorized to meet the rates of the direct routes at competitive points and maintain higher rates to intermediate points, provided the rates to the intermediate points do not exceed for like distances the rates over the direct routes to the competitive points and do not exceed the lowest combinations. *Lake Superior Paper Co. v. Director General*, 33 (34-35).

Where a rate is unrestricted in its application it applies on shipments which move through a point via which it was not intended to apply even though such route is unusual and unduly circuitous. *St. Tamany Ice & Mfg. Co. (Ltd.) v. Director General*, as Agent, 491 (492).

While distances over the circuitous routes are more than 20 per cent greater than over the direct route, as no good reason appears for continuing departures from the long-and-short-haul rule of the fourth section of the act at intermediate points, application for relief denied. *Tribune v. B., A. & P. Ry. Co.*, 557 (560).

CIRCUITOUS ROUTES—Continued.

Proposed reduction in interstate rates on brick and articles taking same rates from Danville, Ill., to certain points in Indiana in the Chicago, Ill., group, and from Streator, Ill., to Chicago, in order that the Wabash R. R. which forms a circuitous route may compete for traffic moving via direct lines, found justified as to Streator. Establishment thereof from Danville found not justified as undue prejudice to Attica, Ind., would result. Brick from Danville, 624.

Carriers having indirect routes authorized to establish rates the same as those in effect over the direct lines from and to the same points and to maintain higher rates at intermediate points provided that authority granted shall not extend to intermediate points via the circuitous lines to which the haul is not longer than that of the direct line or route from and to the competitive points; and that the rates from the other intermediate points shall in no case exceed the lowest combination. Chamber of Commerce of Johnson City, Tenn. *v.* S. Ry. Co., 709.

CLASS AND COMMODITY RATES. *See also* CLASS RATES; COMMODITY RATES.

Applicable class-B rate on apples in barrels, from Westville, Okla., to Fayetteville, Ark., exceeded lower commodity rate subsequently established, which lower rate was on a parity with rates on like traffic between points in the same territory for similar distances. Reparation awarded. West *v.* St. L.-S. F. Ry. Co., 69.

Class rates on barley flour from Minneapolis, Minn., and Omaha, Nebr., to Los Angeles, Calif., and certain other points in California, Arizona, and New Mexico, exceeded lower commodity rates on wheat and other kinds of flour, which lower rate was subsequently made applicable to barley flour. Reparation awarded. Pillsbury Flour Mills Co. *v.* Director General, as Agent, 81.

Sixth-class rates on ashes from Paterson, N. J., to Goshen, N. Y., exceeded lower commodity rate from Croxton, N. J., to Goshen, applicable under rule 77 of Tariff Circular 18-A. Reparation awarded. Le Prestre Miller Stock Farms (Inc.) *v.* E. R. R. Co., 149.

L. c. l. class rates on steel crown blocks and steel calf-wheel and bull-wheel shafts, in carloads, from Parkersburg, W. Va., to Eastland and Ranger, Tex., found unreasonable to extent they exceeded commodity rates on oil well supplies in mixed carloads. Reasonable maximum relationship of rates prescribed and reparation awarded. Parkersburg Rig & Reel Co. *v.* Director General, as Agent, 154.

Proposed revision of, in territory west of the Cascade Mountains extending from Portland, Oreg., on the south, to Vancouver, B. C., on the north, involving both increases and reductions, found justified in part. Rates between North Pacific Coast Points, 159.

Class rate on fresh meat from Spokane, Wash., to Salt Lake City, Utah, exceeded lower commodity rate from Portland, Oreg., San Francisco, and Los Angeles, Calif., which lower rate was subsequently made applicable from Spokane. Reparation awarded. Armour & Co. *v.* O. S. L. R. R. Co., 173.

Sixth-class rates on sulphuric acid, in iron drums, from Richmond, Va., to Kannapolis, N. C., found unreasonable as compared with rates for like distances between various southern points and to extent they exceeded lower commodity rate to Charlotte, N. C., a farther distant point, which lower rate was subsequently made applicable to Kannapolis. Reparation awarded. Cannon Mfg. Co. *v.* Director General, as Agent, 183.

CLASS AND COMMODITY RATES—Continued.

Proposed cancellation of any-quantity rates on woolen yarn from Skowhegan, Me., to various interstate destinations, and application of first-class rates in lieu thereof, found not justified and contrary to the principle in *New England Dry Goods*, 49 I. C. C., 147, that so long as commodity rates on piece goods are maintained a similar basis should not be denied to wholly or partly finished cloth. Woolen Yarn from Skowhegan to Boston, 261.

The peculiar conditions warranting commodity rates negative the presumption of a necessarily close percentage relationship between classes and commodities. Rates to, from, and between points South of Ohio River, 306 (316).

From points in California to Douglas, Ariz., found unduly prejudicial to extent they exceed corresponding rates from the same points of origin to Bisbee, Ariz., and to certain cross-country points on the Southern Pacific in Arizona and New Mexico. *Douglas Chamber of Commerce v. A. T. & S. F. Ry. Co.*, 405.

First-class rate on frozen beef from Columbus, Ohio, to New York, N. Y., moving as routed by the operating committee of the Railroad Administration, found unreasonable as compared with lower commodity rates from other Ohio points for greater distances. Reparation awarded to basis of commodity rate in effect via route other than route of movement. *Morris & Co. v. Director General*, as Agent, 435.

Fifth-class rates on iron tanks, k. d., from Cushing, Okla., to Central City, Ohio, and Morgantown, W. Va., found not unreasonable as compared with lower emergency commodity rate established from Cushing to Roxana, Ill., upon representation of a competing company which contemplated the removal of its refinery to the latter named point, and which expired by limitation, or with lower commodity rates maintained in the opposite direction in which there is a regular movement. *Pure Oil Co. v. Director General*, as Agent, 444.

Class rates applying on sporadic shipments can not be condemned merely because commodity rates are maintained in the opposite direction in which there is a regular movement. *Id.* (445).

Proposed cancellation of interstate commodity rate on lumber from North Tonawanda to Canandaigua, N. Y., leaving in effect higher class rates which would contravene the long-and-short-haul provision of the fourth section of the act, found not justified. Lumber from North Tonawanda to Canandaigua, 530.

Commodity rate on canned condensed milk from Denmark, Wis., to Bangor, Me., exceeded lower fifth-class rate prescribed in *Hires Condensed Milk Co.*, 38 I. C. C., 441, and contemporaneously in effect on numerous canned products, which lower rate was subsequently made applicable to canned milk. Reparation awarded. *Armour & Co. v. C. & N. W. Ry. Co.*, 641.

CLASSIFICATION.

In General:

Value is only one of the many elements that enter into the classification of an article. *Link-Belt Co. v. P., C., & St. L. R. R. Co.*, 195 (196).

The susceptibility of an article to damage in transit is an important factor which enters into its classification rating. *Indian Packing Corp. v. Director General*, as Agent, 205 (208).

CLASSIFICATION—Continued.

The general rule of the classification committee is to provide specific ratings based on classification characteristics of articles and not upon their mixing possibilities. Classification Rating on Paper Shopping Bags, 423 (425-426).

Bags, shopping, paper: Proposed increased rating on, with handles, c. 1. and 1. c. 1., in official, southern, and western classifications, found justified. Protestants are particularly interested in the mixture of paper shopping bags with ordinary paper bags, but the general rule of the classification committee is to provide specific ratings based on classification characteristics of articles and not upon their mixing possibilities. Classification Rating on Paper Shopping Bags, 423.

Beef, dried: Official classification rating of second class on sliced dried beef, in glass, 1. c. 1., found unreasonable as compared with rating on the same commodity in metal cans or in bulk, in barrels, or boxes. Rating of third-class prescribed and reparation awarded. *Indian Packing Corp. v. Director General*, as Agent, 205.

Chains, machine finished steel roller: Ratings on, in bags, of one-and-one-half times first class, 1. c. 1., and first class, c. 1., in official classification territory, found unreasonable to extent they exceeded ratings of second class, 1. c. 1., and fourth class, c. 1., applicable on the same commodity when shipped in barrels or boxes. Reasonable ratings prescribed for the future. *Link-Belt Co. v. P., C., C. & St. L. R. R. Co.*, 195.

Extracts, flavoring: Proposed first-class rating on, moving by express in official classification territory found not justified. Carrier contended that extracts are not articles of food or drink for which second-class rating was primarily established, but are food adjuncts, but since this commodity falls within the description of "food" as defined in section 6 of the food and drugs act of 1906, contention not sustained. Classification Rating on Flavoring Extracts, 53.

Floor sweeping compound: Rating on, c. 1., from St. Louis, Mo., to points in official classification territory found not unreasonable as compared with rating on sawdust. *Cotto-Waxo Co. v. A. A. R. R. Co.*, 209.

Mohair, camel's wool and hair, and alpaca hair: Ratings applicable on, in official, southern, and western classification territories, found unreasonable for the future to extent they exceed the ratings within the respective territories on wool in like form, package, and quantity. *Boston Wool Trade Asso. v. A. & S. Ry. Co.*, 365 (378).

Speedometers, speedometer heads and connections: Ratings in western classification on, and rates thereon from Chicago, Ill., to certain Pacific coast points, found unreasonable. Maximum ratings and rates prescribed and reparation awarded. *Stewart-Warner Speedometer Corp. v. Director General*, as Agent, 541.

Wool in the grease: Ratings applicable in western and official classification territories on, washed or unwashed, not scoured, not shown unreasonable, but rating applicable in southern territory found unreasonable to extent it exceeds fourth class, minimum 24,000 pounds, subject to rule 34. *Boston Wool Trade Asso. v. A. & S. Ry. Co.*, 365 (372).

Wool nolls and waste: Ratings on, in official, southern, and western classification territories not shown unreasonable, except that in western territory the 1. c. 1. ratings are unreasonable to the extent they exceed first class. *Boston Wool Trade Asso. v. A. & S. Ry. Co.*, 365 (376).

CLASSIFICATION—Continued.

Wool, scoured: Less-than-carload ratings on, in western territory found unreasonable to extent they exceed one and one-fourth times first class on shipments in bags or bales, not machine pressed, and first class on shipments in machine-pressed bales. Second class rating, c. l., applicable in all territories and l. c. l. ratings in territories other than western, found not unreasonable. *Boston Wool Trade Asso. v. A. & S. Ry. Co.*, 365 (374).

Wool tops: Ratings on, in official, southern, and western classification territories not shown unreasonable, except that the ratings in western territory applicable on l. c. l. shipments are unreasonable to extent they exceed one and one-fourth times first class in bags or bales, not machine pressed and first class on shipments in machine-pressed bales. *Boston Wool Trade Asso. v. A. & S. Ry. Co.*, 365 (375).

CLASS RATES. *See also* CLASS AND COMMODITY RATES.

Minimum class-E rate, established pursuant to general order No. 28 of the Director General, and assessed on intrastate shipments of garbage from Minneapolis, Minn., to Spur No. 8, Minn., during federal control, found unreasonable to extent it exceeded the rate applicable prior to June 25, 1918, plus a 25 per cent increase. Reparation awarded. *Reservoir Heights Stock Ranch v. Director General*, as Agent, 57.

Proposed changes in class rates, involving both increases and reductions, between points south of the Ohio River, including the Mississippi Valley, purporting to be in compliance with the Commission's orders in *Memphis-Southwestern Investigation*, 55 I. C. C., 515, and other cases, and designed to eliminate fourth section departures ordered removed, and at the same time to standardize rates which have long been on a depressed basis, found justified in part only. Maximum bases prescribed and new schedules required to be filed in accordance therewith. Rates to, from and between Points South of Ohio River, 107.

Proposed increased class rates between El Paso, Tex., and points on lines of the Santa Fe west of Rincon and Belen, N. Mex., which would result in increases of 35 per cent over the corresponding rates of August 25, 1920, found not justified. Rates Between El Paso and New Mexico and Arizona, 526.

COMBINATION RATES.

Combination rate on pig lead from Granby, Mo., to Seattle, Wash., exceeded lower combination applicable under Rule 5 (b) of Tariff Circular 18-A. Refund of overcharges directed. *Mitsui & Co. v. Director General*, as Agent, 4.

Rates charged on cotton seed from certain points in Florida to Cordele, Ga., based on the Jacksonville, Fla., combinations, through which point none of the shipments moved, found unreasonable to extent they exceeded the lowest combinations over routes of movement and other routes. Reparation awarded. *Empire Cotton Oil Co. v. Director General*, as Agent, 64.

On cotton seed from certain points in Florida to Cordele, Ga., higher than the aggregates of intermediates over the route of movement, not protected by appropriate fourth section applications, found unlawful. *Id.* (65).

COMBINATION RATES—Continued.

Fact that combination of rates from certain points of origin to a certain destination is higher for shorter distances than the combination of rates from the same points to farther distant destinations does not of itself warrant a finding that the rates for the shorter distances are either unreasonable or unduly prejudicial. Comparisons based upon distance alone have but little value. *Nebraska Seed Co. v. Director General*, as Agent, 75 (77).

Combination rate on oats from Rosewood, La., to Natchez, Miss., found unreasonable to extent that the factor to New Orleans, La., exceeded the rate prescribed in *Natchez Chamber of Commerce*, 58 I. C. C., 610, on the same commodity for a like distance. Reparation awarded. *Rumble & Wensel Co. v. Director General*, as Agent, 199.

Under ordinary conditions the practice of making through rates by adding to a rate for a long distance the full local rate from the basing point to destinations a relatively short distance beyond disapproved. *Edwards & Bradford Lumber Co. v. Director General*, as Agent, 503 (506).

On coal from points in Virginia and Kentucky to Charleston Mining & Manufacturing Co., Fla., both factors of which were increased under general order No. 28 of the Director General, found legally applicable. Tariff rule in basing tariff simply prescribed a method of constructing through rates between the points in question; and the measure of the resulting through rates might vary with changes in the individual factors. *Charleston Mining & Mfg. Co. v. Director General*, as Agent, 553.

Upon supplemental report, and following *Sligo Iron Store Co.*, 62 I. C. C., 643, rate legally applicable found to be the through combination rate plus single increase as provided under general order No. 28 of the Director General, as one of the tariffs used in making combination rates on through shipments contained a rule that such rates would be subject to a single increase and there was a holding out to the shipper of the rate so constructed which carrier should protect. Refund directed. Former report 59 I. C. C., 246. *Indian Refining Co. (Inc.) v. Director General*, as Agent, 643.

Upon further hearing and following *Interior Iowa Cases*, 28 I. C. C., 64; 29 I. C. C., 536; and 46 I. C. C., 39, combination through rates on walnut dimension lumber from Des Moines, Iowa to points east of the Indiana-Illinois state line, or for export, found unreasonable and unduly prejudicial to extent that the proportional commodity rates from Des Moines to upper Mississippi River east-bank crossings exceed 57 per cent of the corresponding proportional commodity rates from the Missouri River cities to Mississippi River crossings. Original report, 53 I. C. C., 484. *Railroad Commissioners of Iowa v. M. & St. L. R. R. Co.*, 673.

Following *Sligo Iron Store Co.*, 62 I. C. C., 643, where one of the tariffs used in making combination rates on through shipments contained a rule that such rates will be subject to the increase authorized under general order No. 28 but once and tariffs of the other carriers participating in the movement did not publish the clause or refer to any other tariff publishing such a rule, there is a holding out to the shipper of the rate so constructed which carriers should protect. Shipments found overcharged and reparation awarded. *Madison Lumber & Mill Co., v. Director General*, as Agent, 699 (701).

COMBINATION RATES—Continued.

Through rate applicable on crude petroleum, in tank-car loads, from Beattyville, Ky., to Findlay, Ohio, found unreasonable due to the factor, Beattyville to Cincinnati, Ohio. Reparation awarded. *National Refining Co. v. Director General*, as Agent, 704.

COMMERCIAL AND ECONOMIC CONDITIONS.

Upon investigation, grain, grain products, and hay, on the whole, found to be bearing such a disproportionate share of transportation charges as to stifle and burden the industry. Rates within the western and mountain Pacific groups as defined in *Increased Rates, 1920*, 58 I. C. C., 220, found unjust and unreasonable for the future and reductions required. Rates on Grain, Grain Products, and Hay, 85.

Proposed cancellation of specific rates on box shooks from points in Virginia and the Carolinas to destinations in New York and other eastern states and to substitute therefor the prevailing lumber rates involving both increases and reductions and which would result in a disturbance of a long-standing relationship of rates between competing points at a time when the industry is seriously depressed, found not justified. Box Shooks from Southeast to Eastern Points, 389.

The Commission can not make rates solely with regard to the resultant ability of a shipper to meet commercial competition. *Mason Valley Mines Co. v. W. P. R. R. Co.*, 477 (482).

COMMERCIAL COMPETITION. See COMPETITION.**COMMODITY RATES. See also CLASS AND COMMODITY RATES.**

Proposed revision of, involving both increases and reductions, designed to eliminate deviations from the long-and-short-haul provision of the fourth section of the act, in the construction of rates primarily affecting Mississippi Valley points and Nashville, Tenn., found not justified in certain instances and justified in others. Maximum bases prescribed. Rates to, from, and between Points South of Ohio River, 306.

The peculiar conditions warranting commodity rates negative the presumption of a necessarily close percentage relationship between classes and commodities. *Id.* (316).

Evidence presented found entirely inadequate to warrant a reversal of the conclusions reached in the *Wool Investigation*, 23 I. C. C., 151, and proportional commodity rates based upon findings reached in that case, on wool in the grease, from Mississippi River crossings to Boston, Mass., not shown to be unreasonable. *Boston Wool Trade Assn. v. A. & S. Ry. Co.*, 385 (380).

Proportional commodity rate from Duluth, Minn., to Boston, Mass., lake-and-rail, on wool and mohair in the grease, in bags, sacks, and machine pressed bales, found unreasonable for the future and reasonable maximum rates prescribed. *Id.* (380).

Proportional commodity rates to Boston, Mass., from Texas points, all rail, on wool and mohair in the grease, in bags, sacks, and machine pressed bales, found unreasonable and reasonable basis of maximum rates prescribed. Corresponding rail-water-and-rail rates not shown to be unreasonable. *Id.* (381-382).

From points in Oregon and Washington, and points basing thereon, to Douglas, Ariz., applicable via California junctions, found unduly prejudicial to extent that they exceed corresponding rates via the same junctions from the same points of origin to El Paso, Tex., and Bisbee, Ariz. *Douglas Chamber of Commerce v. A. T. & S. F. Ry. Co.*, 405.

COMMON CARRIER.

Following *City of East Liverpool, Ohio*, 51 I. C. C., 563. The Steubenville, East Liverpool & Beaver Valley Traction Co., an interurban electric line, found to be subject to the Commission's jurisdiction. *Ohio and Pennsylvania Rates, Fares, and Charges*, 517 (519).

COMMUTATION FARES.

Passenger fare of 10 cents for all passengers, maintained by the Louisville & Northern Ry. & Lighting Co., an electric line, between Louisville, Ky., and New Albany, Ind., found unreasonable to extent it exceeds 10 cents per passenger for a single trip and a commutation fare of 9 cents per passenger upon the purchase of not exceeding 12 tickets. *City of New Albany v. L. & N. Ry. & L. Co.*, 468.

Intrastate commutation fares of the Pennsylvania-Ohio Power & Light Co., an electric line, required by franchise contract to be maintained between Hubbard and Youngstown, Ohio, and which are lower than the corresponding interstate fares between Sharon, Pa., and Hubbard, and between Sharon and Youngstown, found unduly preferential of intrastate passengers, unduly prejudicial to interstate passengers, and unjustly discriminatory against interstate commerce. Reasonable fares prescribed. *Ohio Rates, Fares, and Charges*, 493.

COMPARATIVE RATES. *See also* ANALOGOUS ARTICLES.

In General: Fact that carriers have accorded to one article a basis of rates below normal is of itself no reason, in the absence of unjust discrimination or undue prejudice, for requiring the establishment of the same rates on analogous articles, especially where shipper is directly benefited by the lower basis of rates already in effect. *Pioneer Pole & Shaft Co. v. Director General*, as Agent, 744 (746).

Bars, copper: Rate on, found not unreasonable as compared with rate on copper wire. *Raritan Copper Works v. Director General*, as Agent, 691 (692).

Bull-wheel arms, cants, and pins: Rates on, found unreasonable and unduly prejudicial to extent they exceed the rates on lumber. Relationship of rates prescribed and reparation awarded. *Parkersburg Rig & Reel Co. v. Director General*, as Agent, 568.

Crown blocks and calf-wheel and bull-wheel shafts, steel: L. c. l. class rates on, in carloads, found unreasonable to extent they exceeded commodity rates on oil well supplies in mixed carloads. Reasonable maximum relationship of rates prescribed and reparation awarded. *Parkersburg Rig & Reel Co. v. Director General*, as Agent, 154.

Flitches and planks, hickory: Rates on, found not unreasonable or unduly prejudicial as compared with subnormal rough material rates applied on billets, with which no competitive relationship is shown to exist. Such low rates were established to encourage development of the country along carriers' lines and covered cost of service only. *Pioneer Pole & Shaft Co. v. Director General*, as Agent, 744.

Floor sweeping compound: Rates and rating on, found not unreasonable as compared with rates and rating on sawdust. *Cotto-Waxo Co. v. A. A. R. R. Co.*, 299.

Flour, barley: Class rates on, found unreasonable to extent they exceeded lower commodity rates on wheat and other kinds of flour, which lower rate was subsequently made applicable to barley flour. Reparation awarded. *Pillsbury Flour Mills Co. v. Director General*, as Agent, 81.

COMPARATIVE RATES—Continued.

Garbage: Minimum class-E rate, established June 25, 1918, pursuant to general order No. 28 of the Director General, and assessed on intrastate shipments moving during federal control, found unreasonable as compared with rates on other analogous low grade commodities. Reparation awarded to basis of rate in effect prior to June 25, 1918, increased by 25 per cent. *Reservoir Heights Stock Ranch v. Director General*, as Agent, 57.

Logs: Lumber rates legally applicable and assessed on, when for manufacture and reshipment over the lines of the carrier having the inbound haul, found unreasonable. Under these circumstances the rates on logs are often made lower than the lumber rates between the same points. Reparation awarded. *Willow River Lumber Co. v. Director General*, as Agent, 575.

Masks, gas: Double first-class rate applicable on life-saving apparatus, oxygen, l. c. l., and by analogy assessed on a c. l. shipment of damaged gas masks found unreasonable to extent it exceeded rating of first class, applicable on component parts thereof and other articles, which lower rate was subsequently established on gas masks. Reparation awarded. *Houston Chamber of Commerce v. Director General*, as Agent, 181.

Milk, canned condensed: Commodity rate on, found unreasonable to extent it exceeded lower fifth-class rate prescribed in *Hires Condensed Milk Co.*, 38 I. C. C., 441, and contemporaneously in effect on numerous canned products, which lower rate was subsequently made applicable to canned milk. Reparation awarded. *Armour & Co. v. C. & N. W. Ry. Co.*, 641.

Oil, fuel: Export rate on, in tank-car loads, found not unreasonable or unduly prejudicial as compared with rates on crude oil, approved by the Commission in various cases. *Wenger-Armstrong Petroleum Co. v. Director General*, as Agent, 175.

Oil, peanut: Rate on, in tank-car loads, found unreasonable to extent it exceeded rate on cottonseed, castor, coconut, and similar oils. Reparation awarded. *Mardén, Orth & Hastings Co. v. Director General*, as Agent, 426.

Ore, chrome iron: Following *Maltby Case*, 63 I. C. C., 103, chrome ore found to be a commodity distinct from and more valuable than iron ore, and mere fact that it was subjected to a different measure of increase than iron ore under general order No. 28 of the Director General does not establish the unreasonableness of the rate charged. *Maltby v. Director General*, as Agent, 297.

Pebbles, flint: Rates on imported flint pebbles which were subjected to an increase of 25 per cent under general order No. 28 of the Director General, found not unreasonable as compared with rates on other commodities which were accorded a flat increase under the terms of that order and with which flint pebbles do not compete. *Silica Sand Producers Traffic Asso. v. C., B. & Q. R. R. Co.*, 302.

Rock, lime: Rate on, found not unreasonable as compared with rates on cement, clinker, silica, and other commodities. *Pacific Portland Cement Co. v. Director General*, as Agent, 507 (510).

COMPARATIVE RATES—Continued.

Sand: Considering the regularity and volume of movement, the low value of the commodity, and the fact that an additional car-rental charge was collected when the equipment was furnished by the carrier, no justification found to appear for switching charges on sand, during federal control, moving in complainant's equipment which were greatly in excess of the switching charges applicable on all other traffic. Reparation awarded on basis of lower switching charge subsequently established. *Missouri Portland Cement Co. v. Director General, as Agent, 243.*

Sheep: Based upon operating conditions and cost of service, rates on, in double-deck cars, which are higher than the rate on fat cattle per car, found not unreasonable, but basis of readjustment suggested. *Slater v. S. P. Co., 647.*

Shingles, cedar: Rates on, which are higher than the rates on various kinds of lumber, other than cedar, found not unreasonable, discriminatory, or unduly prejudicial, except to certain points they are unreasonable to extent they exceed the differential prescribed in *West Coast Lumbermen's Asso., 44 I. C. C., 443.* Reparation awarded and reasonable basis of rates prescribed. *A. & C. Mill Co., v. Director General, as Agent, 548.*

Speedometers, speedometer heads, and speedometer connections: Rates on, compared with rates on spotlights and electric meters, break-feed governors, meter recording devices, speed indicators for locomotives and motor boats, and clipping machines. *Stewart-Warner Speedometer Corp. v. Director General, as Agent, 541 (543).*

Cattle, stock: Based upon comparisons of car-mile and ton-mile earnings, rates on, found unreasonable as compared with rates and earnings on various other commodities. *Miller Bros. v. St. L. & S. F. R. R. Co., 593.*

Tanks, iron and steel: Rates on, k. d., found not unreasonable as compared with rates on wrought iron or steel pipe, pipe fittings, brass or bronze valves, and other commodities. *General Iron Works v. Director General, as Agent, 532 (533).*

COMPETITION.

In General: In order to constitute undue prejudice under section 3 a competitive relation between the persons, localities, or descriptions of traffic concerned must generally appear. *Pioneer Pole & Shaft Co. v. Director General, as Agent, 744 (746).*

Articles: Where two commodities, admittedly noncompetitive, have long ceased to bear any common or recognized relationship, and where the basic rates upon both show no appreciable difference in stability or duration, the presumption that the rates applicable to one of the two fixes a reasonable maximum standard for the other is not convincing. *Slater v. S. P. Co., 647 (652).*

Carrier:

It is one thing to give consideration to the condition of all competing carriers in fixing rates between competitive points on a reasonable basis, but quite a different matter to lift the entire rate structure of an important territory solely for the purpose of enabling carriers operating through a different and higher-rated territory to compete at border points with the carriers operating within that territory on a rate equality without reducing the rates at intermediate points in such higher-rated territory. Rates to, from, and between Points south of Ohio River, 306 (329).

COMPETITION—Continued.

Carrier—Continued.

Proposed reduction in interstate rates on brick and articles taking same rates from Danville, Ill., to certain points in Indiana in the Chicago, Ill., group, and from Streator, Ill., to Chicago, in order that the Wabash R. R., which forms a circuitous route may compete for traffic moving via direct lines, found justified as to Streator. Establishment thereof from Danville found not justified, as undue prejudice to Attica, Ind., would result. Brick from Danville, 624.

Commercial: The Commission can not make rates solely with regard to the resultant ability of a shipper to meet commercial competition. Mason Valley Mines Co. v. W. P. R. R. Co., 477 (482).

Market:

Fact that keen market competition exists which has influenced the making of rates in the past, and the further fact that parties are practically agreed that complete fourth-section relief should be granted are not in themselves sufficient to justify such action on the part of the Commission. Coffee from Galveston and other Gulf Ports, 26 (29-30).

By the transportation act, 1920, if authority is granted a circuitous line to meet the charges of a more direct line at competitive points and maintain higher charges at intermediate points, "the authority shall not include intermediate points as to which the haul of the petitioning line or route is not longer than that of the direct line or route between the competitive points." While this limitation does not apply in terms to relief granted because of market competition, the Commission has felt that in exercising its discretion under the law the same principles should be applied, believing that the same reasons for such a limitation exists in the one case as in the other. *Id.* (30).

Motor Truck: Upon further hearing, certain carriers authorized to reduce rates on gasoline from Somerset to San Antonio, Tex., and on gasoline and fuel oil from Grand Prairie to Dallas, Tex., to a basis lower than prescribed in the *Shreveport Case*, 48 I. C. C., 312, in order to meet motor-truck competition and keep the traffic to their rails. Railroad Commission of Louisiana v. A. H. T. Ry. Co., 197.

Water: Should affect like rates similarly to all points in the same general territory. Douglas Chamber of Commerce v. A., T. & S. F. Ry. Co. 405 (410).

COMPONENT. See FACTOR.

CONCESSION. See REBATE.

CONCURRENCE.

Proposal of the L. & N. R. R. to cancel its concurrence in joint interstate rates on stone, ground or powdered, from Bridgeport and Mascot, Tenn., to stations on its line, leaving in effect higher combinations of local class rates, found not justified. Stone from Bridgeport and Mascot to L. & N. Stations, 515.

Following *Sligo Iron Store Co.*, 62 I. C. C., 643, where one of the tariffs used in making combination rates on through shipments contained a rule that such rates will be subject to the increase authorized under general order No. 28 but once, and tariffs of the other carriers participating in the movement did not publish the clause or refer to any other tariff publishing such a rule, there is a holding out to the shipper of the rate so constructed which carriers should protect. Madison Lumber & Mill Co. v. Director General, as Agent, 699 (701).

CONSIGNOR AND CONSIGNEE.

Whether consignor was legally obliged to reimburse consignee for unreasonable freight charges, or was actuated solely by considerations of commercial policy is immaterial where consignor was a party to the transportation record and it is not disputed that it actually bore the burden of the unreasonable freight charges. Consignor is the only person to whom reparation could legally be awarded. *Pure Oil Co. v. Director General*, as Agent, 688 (690).

CONSOLIDATION.

Contention that merger of electric railways, originally performing purely intrastate and city street-car service, into an operating company now performing an interstate interurban business, does not change their original status, *Held*: Whatever may have been the original service afforded by the respective railways at the time of the merger, the consolidated company now is carrying on much more than a street railway business and in its interurban operations it now assumes the status of an electric railway and as such is engaged in interstate transportation. *Ohio and Pennsylvania Rates, Fares, and Charges*, 517 (524).

CONSTRUCTION OF STATUTE.

The duty cast upon the Commission by section 15a is continuing and looks to the future. It does not constitute a guaranty to the carriers, nor is the obligation cumulative. The Commission is not restricted by past or present statistics of operation and earnings. These are serviceable only as they illuminate the future. What is contemplated by the law is that in this exercise of rate-making power the result shall reflect the Commission's best judgment as to the basis which may reasonably be expected for the future to yield the prescribed return. *Rates on Grain, Grain Products, and Hay*, 85 (99).

The purpose of section 15a was undoubtedly to better stabilize the credit of railroads, reassure investors, and attract capital to the railroad industry. It is plainly the Commission's duty to do everything in its power to carry out this purpose. *Id.* (99).

Carriers challenge the Commission's power to do more than prescribe the "form" as distinguished from the substance of a bill of lading, but such interpretation would imply that each carrier could insert its own peculiar phraseology in its bill of lading, while the intention of Congress to have a uniform bill of lading prescribed by the Commission is clearly indicated in section 25 of the act, under which the Commission is also required to "preserve for carriers by water the protection of limited liability provided by law," and this can not be done by specifying color of paper or size of type. *Export Bill of Lading*, 347 (352).

The Commission's power to prescribe rules and regulations, not inconsistent with the act, which shall constitute and determine the form of the bill of lading, covers the terms or tenor of that instrument, and is, as to the transportation until delivery to the ocean carrier, adequate and complete. And the intent of Congress to require a uniform through export bill of lading and to have the terms thereof prescribed by the Commission seems clear. *Id.* (352).

CONTAINERS. *See also* PACKING; RETURNED EMPTIES.

Proposed increased c. l. minimum on egg-box stuff and egg-case fillers from Missouri River points to interstate destinations in Kansas, from 24,000 to 30,000 pounds, which will establish throughout this territory a uniform description on these articles, found justified. Proposed minimum is satisfactory to the majority of shippers and can be loaded into a standard 36-foot car. *Minimum Weight on Egg-Box Stuff and Egg-Case Fillers*, 51.

CONTAINERS—Continued.

Official classification rating of second class on sliced dried beef, in glass, l. c. l., found unreasonable as compared with rating on the same commodity in metal cans or in bulk, in barrels or boxes. Rating of third class prescribed and reparation awarded. *Indian Packing Corp. v. Director General*, as Agent, 205.

The liability of an inner container to breakage depends chiefly on the method of packing and the character of the outer container, which the carrier may control. When shipments are properly packed in an outer container of the right character, the character of the inner container may become relatively unimportant. *Id.* (208).

Proposed changes in packing requirements, estimated weights, and weighing of eastbound transcontinental shipments of deciduous fresh fruits, which provide that if shipments are made in packages not conforming to the "standard railroad container," charges will be computed on basis of "actual" weight, determined by weighing at least five packages from each lot of the different kinds of fruit in other than standard packages, found not justified as some species of a particular kind weigh more than others and irregular packages of heavier fruit would thus be subjected to a higher charge because of excess over estimated weight specified in the tariff. *Packing Requirements of Deciduous Fresh Fruits*, 539.

CONTRACTS. See also AGREEMENT; FRANCHISE.

That a carrier may by contract employ the owner of property transported to perform a portion of the transportation service is recognized by section 15 of the act. The effect of such a contract is to determine the amount to be paid for the services rendered. The Commission's duty is to take care lest the sum paid becomes so large as to amount to an unlawful concession from the transportation rate; and it may determine what is a reasonable charge as the maximum to be paid by the carrier and fix the same by appropriate order. *Cambria Steel Co. v. Director General*, 737 (740-741).

COST OF SERVICE.

Based upon operating conditions and cost of service, rates on sheep in double-deck cars from certain points in Idaho, Oregon, Nevada, and California, to San Francisco, Calif., and bay points, which are higher than the rate on fat cattle per car, found not unreasonable, but basis of readjustment suggested. *Slater v. S. P. Co.*, 647.

Defendant's denial to complainant of an allowance for spotting cars within its plant at Johnstown, Pa., equal to the cost of such service, not shown to have subjected complainant to the payment of unreasonable rates, or to undue prejudice as compared with services and allowances accorded competitors at various points. *Cambria Steel Co. v. Director General*, 737.

The Commission is without power to require carriers to pay allowances to shippers for spotting. *A fortiori*, it can not compel a carrier to increase an allowance of this kind on the sole ground that it is inadequate to cover the cost to the shipper whom it has employed to perform the particular service. *Id.* (741).

CROSS EXAMINATION.

Affidavits offered in evidence by certain complainants to a proceeding to show that they made shipments and paid and bore the charges thereon were objected to by defendants upon ground that they were not accorded the right of cross-examination. *Held*: As to such complainants reparation denied. *Stewart-Warner Speedometer Corp. v. Director General*, as Agent, 541 (544); *United Iron Works v. Director General*, as Agent, 601 (604).

CUMMINS AMENDMENT.

Conclusion reached in former report 52 I. C. C., 671, 727, that the Cummins amendment does not apply to transportation from a point in the United States to a point in a nonadjacent foreign country, adhered to. Export Bill of Lading, 347 (354).

Establishment of joint rates on ore and concentrates from Paxton and Engels, Calif., to Wabuska, Nev., found desirable in the public interest, and existing rates for such transportation found unreasonable for the future to extent they exceed scale based upon released values herein prescribed. Mason Valley Mines Co. v. W. P. R. R. Co., 477.

DAMAGED GOODS.

Double first-class rate applicable on life-saving apparatus, oxygen, l. c. l. and by analogy assessed on a c. l. shipment of damaged gas masks found unreasonable to extent it exceeded rating of first class, applicable on component parts thereof and other articles, which lower rate was subsequently established on gas masks. Reparation awarded. Houston Chamber of Commerce v. Director General, as Agent, 181.

DAMAGES.

Following *Iten Biscuit Co.*, 50 I. C. C., 724; 53 I. C. C., 729, no award of reparation made due to an unauthorized departure from the long-and-short-haul provision of section 4 of the act, where shipper did not prove damage by reason of collection of higher rate to the intermediate point. *Anaconda Copper Mining Co. v. Director General, as Agent*, 136 (139).

Defendant conceded that rates complained of were unreasonable, but contended that since complainant has not proven damage no reparation should be awarded. *Held*: Contention precluded by decision in *Darnell-Taenzler Case*, 245 U. S., 531. *Le Prestre Miller Stock Farms (Inc.) v. E. R. R. Co.*, 149.

Complainant, in complying with rule V of the Commission's Rules of Practice, authorized to include in reparation statement details of shipments made subsequent to hearing accompanied by proof in the form of an affidavit that it made the shipments and paid and bore the freight charges thereon, with understanding that if carriers object to proof in affidavit form they may request further hearing with respect to reparation. *Indian Packing Corp. v. Director General, as Agent*, 205 (210).

Where witness had no personal knowledge as to whether complainant paid and bore the freight charges, reparation denied for exaction of an unreasonable and unlawful rate for want of proof. *Tacoma Junk Co. v. N. P. Ry.*, 305.

Reparation awarded to complainant, a stranger to the transportation transaction, who was in reality the consignee and who bore the transportation charges. *Citizens Gas Co. v. Director General, as Agent*, 457 (460).

Affidavits offered in evidence by certain complainants to a proceeding to show that they made shipments and paid and bore the charges thereon were objected to by defendants upon ground that they were not accorded the right of cross-examination. *Held*: As to such complainants reparation denied. *Stewart-Warner Speedometer Corp. v. Director General, as Agent*, 541 (544); *United Iron Works v. Director General, as Agent*, 601 (604).

Upon supplemental report, proof having been submitted and defendants having agreed to accept an affidavit covering certain shipments, reparation awarded certain interveners upon shipments on which charges were paid at rates found unreasonable in second supplemental report, 57 I. C. C., 584. Original and first supplemental reports, 37 I. C. C., 652 and 53 I. C. C., 741. *Cotton Mfrs. Asso. of S. C. v. C. & O. Ry.*, 633.

DAMAGES—Continued.

Whether consignor was legally obliged to reimburse consignee for unreasonable freight charges, or was actuated solely by considerations of commercial policy is immaterial where consignor was a party to the transportation record and it is not disputed that it actually bore the burden of the unreasonable freight charges. Consignor is the only person to whom reparation could legally be awarded. *Pure Oil Co. v. Director General*, as Agent, 688 (690).

DANGEROUS ARTICLES.

Proposal of the Norfolk & Western Ry. to eliminate the joint class rates on high explosives which now apply to stations on its line under exceptions to the classification, leaving higher combinations in effect, and to restrict the application of such rates to shipments moving to stations on the C. & O. and points beyond, found not justified as facts presented do not justify a departure from the joint class-rate basis prescribed in *Nitro Powder Co.*, 35 I. C. C., 77. *Restrictions in Routing Explosives via N. & W. Ry.*, 10.

DECLARED VALUE. See RELEASED RATES.**DEFICIT.**

Neither combination rates nor components thereof found unreasonable *per se* when consideration given to the facts that carrier incurred an operating deficit and is operated through a sparsely settled country with no present prospect of increased traffic. *Pioneer Lumber Co. v. Director General*, as Agent, 485 (487).

DELIVERY.

While carriers are responsible for any consequences naturally flowing from error of originating line in omitting point of delivery from billing and failing to transmit such instructions to connecting line, the proximate cause of the accrual of demurrage found to be the nondelivery to defendants of complainant's instructions specifying to whom cars were to be delivered. Demurrage charges assessed after receipt of such instructions found illegal and reparation awarded. *Sterling Lumber Co. v. Director General*, as Agent, 432.

Demurrage charges accruing due to failure of carrier to turn shipment over to delivering line specified in bill of lading, found unlawful. Refund directed. *Elm City Lumber Co. v. S. A. L. Ry. Co.*, 660.

DEMURRAGE. See also DETENTION.

While carriers are responsible for any consequences naturally flowing from error of originating line in omitting point of delivery from billing and failing to transmit such instructions to connecting line, the proximate cause of the accrual of demurrage found to be the nondelivery to defendants of complainant's instructions specifying to whom cars were to be delivered. Demurrage charges assessed after receipt of such instructions found illegal and reparation awarded. *Sterling Lumber Co. v. Director General*, as Agent, 432.

Accruing on cars of sand which arrived in frozen condition, thus causing delay in unloading and resulting in subsequent shipments being constructively placed on tracks in the vicinity of complainant's plant or in railroad yards, found not unreasonable or otherwise unlawful as complainant failed to comply with tariff requirement which provided for the service upon carrier's agent of written notice or statement that lading was frozen when tendered. *Hamilton Foundry & Machine Co. v. Director General*, as Agent, 439.

DEMURRAGE—Continued.

Demurrage and storage charges accruing on unclaimed order notify shipment, due to refusal of carrier to comply with shipper's instructions to place in public warehouse without surrender of bill of lading and payment of accrued charges, found not unreasonable or unlawful as there was no specific tariff provision requiring carrier to place shipment in public storage and carrier was legally bound to collect such charges in accordance with the applicable tariff rules and regulations. *Vim Motor Truck Co. v. Director General*, as Agent, 588.

Accruing due to failure of carrier to turn shipment over to delivering line specified in bill of lading, found unlawful. Refund directed. *Elm City Lumber Co. v. S. A. L. Ry. Co.*, 660.

Accruing at reconsignment point found illegally assessed where tariffs did not specifically provide for the imposition of demurrage charges on shipments to embargoed points. *McGowin Lumber & Export Co. v. Director General*, as Agent, 694 (697).

Unless tariffs prohibit reconsignment to embargoed points no demurrage charges accrue. *Id.* (697).

DENSITY OF TRAFFIC. *See SPARSITY OF TRAFFIC; VOLUME OF TRAFFIC.*

DETENTION. *See also DEMURRAGE.*

Delays in rail transportation to the port, belated delivery to dock, the uncertainties of the sea, necessary changes in sailing dates of steamers, and other equally disturbing factors result in car detention at the ports. Decreased Free Time Allowance, 400 (403).

At the ports is not ordinarily intended by shippers, steamship companies, or carriers, and when it occurs is not of material benefit to them. The circumstances and conditions which are controlling in the case of traffic moving through the ports are substantially dissimilar from those which obtain in connection with domestic traffic. Many of the factors which tend to delay traffic intended for ocean movement do not exist in the case of domestic traffic. *Id.* (403).

DIFFERENTIALS. *See also ARBITRARIES; SPREAD OF RATES.*

Where distances from New Orleans, La., and Galveston, Tex., do not differ by more than 100 miles the rates on coffee should be the same, and where the difference is in excess of that distance differentials favoring the port which has the advantage, authorized to be established, properly graded and not exceeding 7 cents. Coffee from Galveston and other Gulf Ports, 26 (32).

Upon supplemental report, original report and order 61 I. C. C., 709, modified upon petition for interpretation and construction thereof, and differentials prescribed on newsprint paper to remove the undue prejudice found to exist against complainants at Sault Ste. Marie, Ont., in favor of competitors located in the Fox River, northern Wisconsin, and Minnesota groups, on traffic destined to the west and southwest. *Lake Superior Paper Co. (Ltd.) v. Director General*, 33.

Based upon the present record which shows a present different relationship of value between wheat and coarse grain and refers to a normal condition, present rates on coarse grains in western and mountain-Pacific groups as defined in *Increased Rates, 1920*, 58 I. C. C., 220, found unjust and unreasonable for the future to extent they may exceed rates 10 per cent less than on wheat. Rates on Grain, Grain Products, and Hay, 85 (100).

DIFFERENTIALS—Continued.

Domestic rates on fuel oil are generally less than on refined oil, and in various cases the Commission has fixed reasonable rates upon crude or fuel oils 5 cents less than on refined oils. *Wenger-Armstrong Petroleum Co. v. Director General*, as Agent, 175 (176).

Rates on common brick from points outside the Chicago switching district to points within said district found not unreasonable but unduly prejudicial to extent they exceed the rates from points inside of that district to interstate destinations therein by more than 10 cents per net ton. Non-prejudicial basis of rates prescribed and reparation denied. *Illinois Brick Co. v. Director General*, as Agent, 273.

Both factors of combination rate on coal from Kenilworth, Utah, to Hillyard, Wash., increased under general order No. 28 of the Director General, the factor Spokane, Wash., to Hillyard being increased by application of the minimum class scale. Competitors on an industrial track in Spokane were charged the Spokane rate plus a switching charge. *Held*: While factor Spokane to Hillyard appears unreasonable, the through rate resulting from its use is not shown unreasonable but found unduly prejudicial to extent it exceeds the rate to Spokane by more than amounts herein prescribed. Reparation denied. *Edwards & Bradford Lumber Co. v. Director General*, as Agent, 503.

Rates on cedar shingles from coast group points in Oregon, Washington, and British Columbia, to destinations in other states and Canada, which are higher than the rates on various kinds of lumber, other than cedar, found not unreasonable, discriminatory, or unduly prejudicial, except to certain points in Oklahoma and Texas they are unreasonable to extent they exceed the differential prescribed in *West Coast Lumbermen's Asso.*, 44 I. C. C., 443. Reparation awarded and reasonable basis of rates prescribed. *A. & C. Mill Co. v. Director General*, as Agent, 548.

Following *Ohio Valley Case*, 53 I. C. C., 148 and *Illinois Coal Cases*, 1920, 62 I. C. C., 741, rates on bituminous coal from mines in western Kentucky to points in the southern peninsula of Michigan found not unreasonable, but to extent they exceed, on a joint basis, by more than 25 cents per ton the rates from mines in the southern Illinois group to the same destinations, found unduly prejudicial. Relationship of rates prescribed. *West Kentucky Coal Bureau v. I. C. R. R. Co.*, 577.

Upon supplemental report, differentials found lawful in original report, 62 I. C. C., 741, found to be just and reasonable maximum and minimum differentials which carriers should establish in removing the undue prejudice found to exist in the relative adjustment in the rates on coal from mines in Illinois. *Illinois Coal Cases*, 1920, 751.

DIRECTOR GENERAL. See **FEDERAL CONTROL.**

DISCRIMINATION. See also **PREFERENCES AND PREJUDICES**; **SECTION 2.**

Certain intrastate rates required by state authority to be maintained within the state of Missouri, lower than the corresponding interstate rates authorized in *Increased Rates*, 1920, 58 I. C. C., 220, found unduly prejudicial to interstate shippers, unduly preferential to intrastate shippers, and unjustly discriminatory against interstate commerce. *Missouri Rates and Charges*, 233.

It would be difficult, if not impossible, to prevent the unjust discrimination and undue prejudice forbidden by the act if carriers could vary the terms of the contract of transportation at will in dealing with different shippers of the same commodity. *Export Bill of Lading*, 347 (352).

DISCRIMINATION—Continued.

Intrastate passenger fares of the Pennsylvania-Ohio Power & Light Co., an interurban electric line, required by franchise contract to be maintained between Hubbard and Youngstown, Ohio, and which are lower than the corresponding interstate fares between Sharon, Pa., and Hubbard, and between Sharon and Youngstown, found unduly preferential of intrastate passengers, unduly prejudicial to interstate passengers, and unjustly discriminatory against interstate commerce. *Ohio Rates, Fares, and Charges*, 493.

If the maintenance of intrastate passenger fares fixed by a franchise contract results in unjust discrimination against interstate commerce, it is within the Commission's power to remove it by prescribing other and different intrastate fares. *Id.* (498).

Contention that a violation of section 2 results from the fact that a portion of a switching movement to a connection with industrial tracks located near a city is identical with the portion of a line haul movement to such city, not sustained where the switching movement does not pass complainant's plant or through the city. *Edwards & Bradford Lumber Co. v. Director General*, as Agent, 503 (505).

Intrastate passenger fares of the Steubenville, East Liverpool & Beaver Valley Traction Co., an interurban electric line, required by ordinance or franchise contracts to be maintained between points in Ohio, and which are lower than the corresponding interstate fares between points in Pennsylvania and points in Ohio, found unduly preferential of intrastate passengers, unduly prejudicial to interstate passengers, and unjustly discriminatory against interstate commerce. *Ohio and Pennsylvania Rates, Fares, and Charges*, 517.

Practice of carrier in distributing cars on basis of actual amount of grain on hand in elevator and ready for shipment, and refusing to take into consideration grain in the country adjacent to complainant's elevator, found not to result in unjust discrimination. *Farmers Grain Co. v. C., R. I. & P. Ry. Co.*, 730.

DISTANCE.

Where distances from New Orleans, La., and Galveston, Tex., do not differ by more than 100 miles the rates on coffee should be the same, and where the difference is in excess of that distance differentials favoring the port which has the advantage authorized to be established, properly graded and not exceeding 7 cents. *Coffee from Galveston and other Gulf Ports*, 26 (32).

Fact that the combination of rates from certain points of origin to a certain destination is higher for shorter distances than the combination of rates from the same points to farther distant destinations does not of itself warrant a finding that the rates for the shorter distances are either unreasonable or unduly prejudicial. Comparisons based upon distance alone have but little value. *Nebraska Seed Co. v. Director General*, as Agent, 75 (77).

Comparisons based upon distance alone are insufficient to establish the unreasonableness of rates. *South Chester Tube Co. v. M., K. & T. Ry. Co.*, 78 (80).

In any group arrangement it is usually possible to pick out particular points the rates to which, because of operating conditions, competition, or other reasons, do not appear properly aligned when considered solely from the standpoint of distance. *Coad v. C., St. P., M. & O. Ry. Co.*, 178 (180).

DISTANCE RATES.

Combination rate on oats from Rosewood, La., to Natchez, Miss., found unreasonable to extent that the factor Rosewood to New Orleans, La., exceeded the rate prescribed in *Natchez Chamber of Commerce*, 58 I. C. C., 610, on the same commodity for a like distance. Reparation awarded. *Rumble & Wensel Co. v. Director General*, as Agent, 199.

Rates on vegetable oils from mill points in Oklahoma, Arkansas, and Louisiana to Dallas, Tex., found unreasonable to extent they exceed the distance scale herein prescribed. *Procter & Gamble Co. v. A. C. R. R. Co.*, 213.

On sand from Fort Gibson, Okla., to Joplin, Webb City, and Springfield, Mo., and Pittsburg, Independence, and Iola, Kans., found unreasonable to extent they exceeded the Shreveport-Texas scale of rates prescribed in the *Shreveport Case*, 48 I. C. C., 312. Reasonable maximum rates prescribed and reparation awarded. *United Iron Works v. Director General*, as Agent, 601.

Rates on pipe and oil-well machinery from Scottsville, Tex., to Mansfield, La., found unreasonable to extent they exceeded rates in excess of the distance scale for similar distances prescribed in the *Shreveport Case*, 48 I. C. C., 312. Reasonable maximum rates prescribed and reparation awarded. *Norris v. T. & P. Ry. Co.*, 665.

If the Commission were to start with a clean slate some so-called scientific basis of rate making, based on strict mileages, might be adopted, but as it is, the process of rate making and dealing with rate situations must necessarily be one of evolution, not revolution. *Kansas Rates, Fares, and Charges*, 679 (681).

DISTURBANCE OF ADJUSTMENT.

Prior to federal control San Francisco, Calif., and Seattle, Wash., were on a rate parity as to export traffic but due to the cancellation of all export rates by the Director General this adjustment disrupted. Rate applicable on pig lead moving from Granby, Mo., to Seattle, for export, found not unreasonable, discriminatory, or unduly prejudicial as compared with lower rate to San Francisco, or with rate established subsequent to movement when Seattle and San Francisco were again placed on a rate parity. *Mitsui & Co. v. Director General*, as Agent, 4.

Rates on petroleum products from the midcontinent oil field in Kansas and Oklahoma to Alton, Iowa, Pipestone, Minn., and Beresford, S. D., found not unreasonable as they compare favorably with rates to the same destinations from other producing points and a finding of unreasonableness would necessitate disturbance of the present rate adjustment and result in a general reduction in rates over a large territory. *Coad v. C., St. P., M. & O. Ry. Co.*, 178.

Due to the cancellation of all export rates by the Director General under general order No. 28, the previously existing relationship of rates on wheat between certain points in Kansas when milled in transit at Salina, Kans., and forwarded to New Orleans, La., for export, was destroyed and subsequently restored. *Held*: Higher rates charged on shipments moving during interim found not unreasonable as subsequently established rates were part of a general readjustment involving both increases and reductions. *Lee Flour Mills Co. v. Director General*, as Agent, 226.

DISTURBANCE OF ADJUSTMENT—Continued.

Proposed cancellation of specific rates on box shooks from points in Virginia and the Carolinas, to destinations in New York and other eastern states and to substitute therefor the prevailing lumber rates involving both increases and reductions and which would result in a disturbance of a long standing relationship of rates between competing points at a time when the industry is seriously depressed, found not justified. Box Shooks from Southeast to Eastern Points, 389.

The mere showing of the fact that in making effective the increases provided in general order No. 28 of the Director General, a slight disturbance was created in the percentage relationship which a specific rate bore to other rates between the same points, and the subsequent voluntary restoration of that relationship, does not warrant a condemnation of the rate in effect during the interim. *Ault & Wiborg v. Director General*, as Agent, 443.

The Commission would not be warranted in permitting the establishment of rates which would disrupt a rate relationship fixed by the Commission and which has existed for many years. Coal from Detroit, Toledo & Ironton R. R. Mines, 564 (566).

Proposed withdrawal of alfalfa feed, cane seed, cotton seed cake and meal, dried beet pulp, and other grain and grain products from list of articles taking corn rates, in western trunk line territory, and including them in list of articles taking wheat rates, found not justified. Since proceeding instituted the Commission in 64 I. C. C., 85 reduced the rates on coarse grains and if suspended schedules are permitted to become effective rates on commodities named will be higher than on corn and other coarse grains with which they are in active competition, thus disturbing the long-standing parity in rates. Classification Exceptions in Western Trunk Line Territory, 613.

DIVERSION. *See also* RECONSIGNMENT.

Due to abnormal ice conditions in Norfolk harbor, the customary route and via which shipments were specifically routed, carrier diverted via routes taking higher rates. *Held*: Such shipments as were diverted without shipper's authorization, found misrouted. Reparation awarded. *Du Pont de Nemours & Co. v. Director General*, as Agent, 170.

Request for diversion could not be complied with owing to shipments having left originating carrier's rails. Request transmitted to connecting carriers but due to rapid movement of shipments, which were forwarded under special orders of the government, shipments had also left connecting carriers' rails and arrived at originally billed destination whence they were reconsigned. *Held*: Tariff of originating carrier only provided for transmission of such request to direct connection and connecting lines exercised due diligence in endeavoring to intercept shipments for diversion. Charges to and from reconsignment point assessed found not unreasonable or unlawful. *Du Pont de Nemours & Co. v. Director General*, as Agent, 667.

Contention that as carriers during federal control were being operated as a unified system by the Director General, that the agent of a carrier was the agent of the Director General, and as such it was his duty to telegraph request for diversion to the last gateway through which he knew the traffic would pass, *Held*: Not sustained as it was not the purpose of the federal control act or of the orders of the Director General in operating under that act to alter or nullify the rates and other provisions of the lawful tariffs. *Id.* (670).

DIVISIONS.

A disagreement between carriers over, is no justification for an increase in rates. Refining in Transit of Copper Articles at Laurel Hill, N. Y., 257 (258).

A division out of a joint rate is essentially different from the allowance contemplated by section 15 of the act. Cambria Steel Co. v. Director General, 737 (742).

DOMESTIC BILL OF LADING. *See* BILLS OF LADING.

DOMESTIC RATES. *See* EXPORT AND DOMESTIC; IMPORT AND DOMESTIC.

DOUBLE-DECK CARS.

Proposed rule, applicable in official classification territory, providing that where carrier is unable to furnish the number of double-deck cars ordered for the transportation of hogs, for the substitution of single-deck cars in accordance with a table of equivalents, found not justified with respect to orders for double-deck cars in excess of 20. Substitution of Single-Deck for Double-Deck Cars, 251.

Based upon operating conditions and cost of service rates on sheep in double-deck cars from certain points in Idaho, Oregon, Nevada, and California, to San Francisco, Calif., and bay points, which are higher than the rate on fat cattle per car, found not unreasonable, but basis of readjustment suggested. Slater v. S. P. Co., 647.

DOUBLE INCREASE.

Allegation of unreasonableness due to the application by carriers of the increases under general order No. 28 of the Director General to each factor instead of but once to the through combinations. *Held*: Reasonableness of such rates can not be determined solely from the method of their construction. Pioneer Lumber Co. v. Director General, as Agent, 485 (486).

Both factors of combination rate on coal from Kenilworth, Utah, to Hillyard, Wash., increased under general order No. 28 of the Director General, the factor Spokane, Wash., to Hillyard being increased by application of the minimum class scale. Competitors on an industrial track in Spokane were charged the Spokane rate plus a switching charge. *Held*: While factor Spokane to Hillyard appears unreasonable, the through rate resulting from its use is not shown unreasonable but found unduly prejudicial to extent it exceeds the rate to Spokane by more than amounts herein prescribed. Reparation denied. Edwards & Bradford Lumber Co. v. Director General, as Agent, 503.

Combination rates on coal from points in Virginia and Kentucky to Charleston Mining & Manufacturing Co., Fla., both factors of which were increased under general order No. 28 of the Director General, found legally applicable. Tariff rule in basing tariff simply prescribed a method of constructing through rates between the points in question; and the measure of the resulting through rates might vary with changes in the individual factors. Charleston Mining & Mfg. Co. v. Director General, as Agent, 553.

Upon supplemental report, and following *Sligo Iron Store Co.*, 62 I. C. C., 643, rate legally applicable found to be the through combination rate plus single increase as provided under general order No. 28 of the Director General, as one of the tariffs used in making combination rates on through shipments contained a rule that such rates would be subject to a single increase and there was a holding out to the shipper of the rate so constructed which carrier should protect. Refund directed. Former report 59 I. C. C., 246. Indian Refining Co. (Inc.) v. Director General, as Agent, 643.

DOUBLE INCREASE—Continued.

Combination rate on petroleum refined oil, in tank-car loads, from Cabin Creek Junction, W. Va., to Bowling Green, Ky., both factors of which were increased 4.5 cents under general order No. 28 of the Director General found unreasonable to extent it exceeded the through rate plus a single flat increase, subsequently established, and unduly prejudicial as compared with the rate from Falling Rock, W. Va., a farther distant competing point from which but a single increase to the through rate was applied. Reparation awarded. *Pure Oil Co. v. Director General*, as Agent, 688.

Following *Sligo Iron Store Co.*, 62 I. C. C., 643, where one of the tariffs used in making combination rates on through shipments contained a rule that such rates will be subject to the increase authorized under general order No. 28 but once and tariffs of the other carriers participating in the movement did not publish the clause or refer to any other tariff publishing such a rule, there is a holding out to the shipper of the rate so constructed which carriers should protect. Shipments found overcharged and reparation awarded. *Madison Lumber & Mill Co. v. Director General*, as Agent, 699 (701).

Contention that combination rates were unreasonable because increase authorized under general order No. 28 of the Director General was applied to each factor instead of but once to the through rate, *Held*: Manner in which rates are constructed is but one of the elements to be considered in reaching proper conclusions. *Id.* (700).

DROUGHT.

Reduced return rates were established by the Director General as emergency rates to prevent cattle from starving. Because of the high price of winter feed, and under impression that such reduced rates would be applied, shipper sent his cattle south for wintering, which cattle were subsequently returned. *Held*: Since no emergency existed and there was no tariff authority for the reduced return rate on cattle moving from points of origin here involved, rates charged found not unreasonable. *Parks v. Director General*, as Agent, 147.

DUTY OF CARRIER.

Shipper urged that as carriers were under unified control and operation during federal control and not in competition, lower rate applicable via route other than route of movement should have been applied. *Held*: Fact that lines were under federal control did not affect the validity of the legally established rates over the separate routes and it was the duty of carrier to forward shipments via the cheapest available route consistent with routing instructions. *West Kentucky Coal Co. v. Director General*, as Agent, 151 (152).

Where shipment is tendered unrouted, it is carrier's duty to forward shipment via the cheapest available route. *Kentucky Wholesale Co. (Inc.) v. Director General*, as Agent, 193.

It is the duty of a carrier to furnish transportation upon reasonable request therefor, and not to unjustly discriminate as between shippers in the distribution of cars. This duty, however, only applies when the commodity tendered for shipment is actually on hand and conveniently located for prompt loading. *Wausau Southern Lumber Co. v. G. & S. I. R. R. Co.*, 732 (736).

DUTY OF COMMISSION.

The Commission is to administer, and, so far as possible, give force and life to all the provisions of the interstate commerce act. Rates on Grain, Grain Products, and Hay, 85 (98).

The duty cast upon the Commission by section 15a is continuing and looks to the future. It does not constitute a guaranty to the carriers, nor is the obligation cumulative. The Commission is not restricted by past or present statistics of operation and earnings. These are serviceable only as they illuminate the future. What is contemplated by the law is that in this exercise of rate-making power the result shall reflect the Commission's best judgment as to the basis which may reasonably be expected for the future to yield the prescribed return. *Id.* (99).

The purpose of section 15a was undoubtedly to better stabilize the credit of railroads, reassure investors, and attract capital to the railroad industry. It is plainly the Commission's duty to do everything in its power to carry out this purpose. *Id.* (99).

Experience has shown the limitations which surround in actual practice the operation of section 15a of the act. When it became apparent that the general increases of 1920, intended to give carriers a specified return, failed by a considerable margin to reach the desired mark, carriers, and shippers alike agreed that it was not the Commission's duty to raise rates to still higher levels. To have done this would clearly have been a vain thing, harmful alike to the country and to the carriers. The rate adjustment can not with advantage be made dependent upon fluctuations in traffic. *Id.* (99).

The question of the jurisdiction of the Commission to prescribe a uniform export bill of lading for shipments to nonadjacent foreign countries in connection with ocean carriers whose vessels are registered under laws of the United States is one of law, but pending judicial interpretation of the pertinent provisions of the act the Commission must construe them in endeavoring to perform the administrative duties which they impose upon it. Export Bill of Lading, 347 (351).

The courts determine the validity of provisions in bills of lading just as they do in the case of other contracts, and do not consider whether or not particular provisions, not contrary to the law, should be included or omitted. The Commission must deal with the terms of the bill of lading as rules and regulations which affect the value of the service rendered to the shipper in the same way as it is affected by rules and regulations published in the carriers' tariffs. *Id.* (353).

DUTY OF SHIPPER.

Every shipper is charged with notice of the terms of interstate tariffs governing his shipments. *South Chester Tube Co. v. M., K. & T. Ry. Co.*, 78 (80).

EARNINGS.

In the absence of convincing comparisons earnings can hardly be considered as indicative of unreasonableness. *Anaconda Copper Mining Co. v. Director General, as Agent*, 136 (139).

Upon further hearing, combination rates to and from Jacksonville, Fla., on stock cattle moving from certain points in Florida and from Birmingham, Ala., to Memphis, Tenn., based upon comparisons of car-mile and ton-mile earnings with various other commodities, found unreasonable as to certain shipments, but not as to others. Reparation awarded. Former report 42 I. C. C., 261, modified. *Miller Bros. v. St. L. & S. F. R. R. Co.*, 593.

EARNINGS.—Continued.

Rates found not unreasonable where the average revenue per car was approximately 5 per cent of the value of the load. *Slater v. S. P. Co.*, 647 (657).

ECONOMIC CONDITIONS. See COMMERCIAL AND ECONOMIC CONDITIONS.

ELECTRIC LINES.

Upon further hearing, order for removal of undue prejudice and unjust discrimination entered in original report, 59 I. C. C., 290, modified by striking therefrom the name of the Ponda, Johnstown & Gloversville R. R. Co., which carrier does not "participate in the transportation" as that term is used in the order. Rates, Fares, and Charges of the N. Y. C. & H. R. Co., 55.

Passenger fare of 10 cents for all passengers, maintained by the Louisville & Northern Ry. & Lighting Co., between Louisville, Ky., and New Albany, Ind., found unreasonable to extent it exceeds 10 cents per passenger for a single trip and a commutation fare of 9 cents per passenger upon the purchase of not exceeding 12 tickets. *City of New Albany v. L. & N. Ry. & L. Co.*, 468.

Intrastate passenger fares of the Pennsylvania-Ohio Power & Light Co., required by franchise contract to be maintained between Hubbard and Youngstown, Ohio, and which are lower than the corresponding interstate fares between Sharon, Pa., and Hubbard, and between Sharon and Youngstown, found unduly preferential of intrastate passengers, unduly prejudicial to interstate passengers, and unjustly discriminatory against interstate commerce. *Ohio Rates, Fares, and Charges*, 493.

Intrastate passenger fares of the Steubenville, East Liverpool & Beaver Valley Traction Co., required by ordinance or franchise contracts to be maintained between points in Ohio, and which are lower than the corresponding interstate fares between points in Pennsylvania and points in Ohio, found unduly preferential of intrastate passengers, unduly prejudicial to interstate passengers, and unjustly discriminatory against interstate commerce. *Ohio and Pennsylvania Rates, Fares, and Charges*, 517.

Following *City of East Liverpool, Ohio*, 51 I. C. C., 563, *The Steubenville, East Liverpool & Beaver Valley Traction Co.*, found to be subject to the Commission's jurisdiction. *Id.* (519).

Contention that merger of electric railways, originally performing purely intrastate and city street-car service, into an operating company now performing an interstate interurban business, does not change their original status, *Held*: Whatever may have been the original service afforded by the respective railways at the time of the merger, the consolidated company now is carrying on much more than a street railway business and in its interurban operations it now assumes the status of an electric railway and as such is engaged in interstate transportation. *Id.* (524).

While it may be argued under *Omaha Street Railway Case*, 230 U. S., 324, that the Commission has no jurisdiction over a city street-car line, it can not be seriously contended that the federal government in its efforts to prevent discrimination is to be prevented by municipalities which, in franchises involving the use of their local streets, assume to regulate the rates to and between other cities; and particularly when such franchises impose rates which are unjust and menace the maintenance of interstate transportation facilities and service. *Id.* (524).

EMBARGOES.

Shipments found misrouted where embargoes were a disability of the carriers, which did not confer upon them the right of diverting shipments to higher rates routes contrary to shippers' instructions, especially where there were no provisions in tariffs at time shipments moved prohibiting reconsignment to embargoed points, and nothing which would have precluded shipper from specifically routing via lower rated routes had it billed shipments to final destinations in the first instance. *McGowin Lumber & Export Co. v. Director General, as Agent*, 694 (697).

Demurrage charges accruing at reconsignment point found illegally assessed where demurrage tariffs did not specifically provide for the imposition of demurrage charges on shipments to embargoed points. *Id.* (697).

Unless tariffs prohibit reconsignment to embargoed points no demurrage charges accrue. *Id.* (697).

EMERGENCY RATES.

Reduced return rates were established by the Director General as emergency rates to prevent cattle from starving. Because of the high price of winter feed, and under impression that such reduced rates would be applied, shipper sent his cattle south for wintering, which cattle were subsequently returned. *Held*: Since no emergency existed and there was no tariff authority for the reduced return rate on cattle moving from point of origin here involved, rates charged found not unreasonable. *Parks v. Director General, as Agent*, 147.

Fifth-class rates on iron tanks, k. d., from Cushing, Okla., to Central City, Ohio, and Morgantown, W. Va., found not unreasonable as compared with lower emergency commodity rate established from Cushing to Roxana, Ill., upon representation of a competing company which contemplated the removal of its refinery to the latter named point, and which expired by limitation. *Pure Oil Co. v. Director General, as Agent*, 444.

EQUALIZING RATES.

The Commission may not adjust rates to equalize natural advantages or disadvantages of geographical location. *Pacific Portland Cement Co. v. Director General, as Agent*, 507 (509).

Proposed cancellation of existing basis for rates on cast-iron pipe and pipe connections from certain points in Tennessee and Alabama to Montana destinations, and application in lieu thereof of the normal basis of combination rates on St. Louis, Mo., so as to permit the traffic to move under the same rates through the different gateways, found justified. Proposed rates compare favorably with rates on cast-iron pipe and on other iron and steel articles from Pittsburgh, Pa., Columbus, Ohio, and Chicago, Ill., to the same Montana destinations. *Cast-Iron Pipe from Birmingham*, 638.

Proposal of carriers to equalize rates from Ohio and Mississippi river crossings and beyond, and from c. f. a. and Buffalo-Pittsburgh territories, and from Memphis and Nashville, Tenn., to Johnson City, Tenn., and Bristol, Va.-Tenn., for purpose of removing undue prejudice to Johnson City, found not justified and reasonable maximum bases prescribed. *Chamber of Commerce of Johnson City, Tenn., v. S. Ry. Co.*, 709.

EQUIPMENT.

A lower rate is justified on shipments moving in equipment furnished by shippers than would be reasonable for shipments moving in carriers' equipment. *Missouri Portland Cement Co. v. Director General, as Agent*, 243 (246).

ERROR.

Carrier published a tariff which was intended to substitute a minimum of 80,000 pounds for the minimum charge of \$15 per car established by the Director General under general order No. 28, on raw clay but through inadvertance the tariff did not carry the necessary provision for application of such minimum. Subsequently tariff corrected and minimum established. *Held*: \$15 minimum charge unreasonable to extent it exceeded rate and minimum subsequently established. Reparation awarded. *Texas-arkana Pipe Works v. Director General, as Agent, 6.*

Combination rate on lignite coal from Stanton, N. Dak., to Hecla, S. Dak., found unreasonable to extent it exceeded lower joint rates subsequently established from other producing points in North Dakota to points in South Dakota, including Hecla. Through oversight tariff did not include Stanton in points of origin. Reparation awarded. *Stehley v. Director General, as Agent, 59.*

Rates charged on petroleum and asphaltum from Franklin, Pa., to intrastate destinations, during federal control, found unreasonable to extent they exceeded the rates from Oil City, Pa. Higher rates were established through error and it was the carriers' practice for many years to apply the Oil City rates on shipments from Franklin, which rate basis was subsequently restored. Reparation awarded. *Atlantic Refining Co. v. Director General, as Agent, 64.*

Had shipper left routing open or observed tariff restrictions several routes over which lower rate applied could have been used, but since he routed shipments via higher rated route through error of agent, that fact of itself does not entitle him to reparation. Every shipper is charged with notice of the terms of interstate tariffs governing his shipments; and mere showing of the existence of lower rates over other routes and comparisons based upon distance alone, are insufficient to establish the unreasonableness of the rate charged. *South Chester Tube Co. v. M., K. & T. Ry. Co., 78.*

While carriers are responsible for any consequences naturally flowing from error of originating line in omitting point of delivery from billing and failing to transmit such instructions to connecting line, the proximate cause of the accrual of demurrage found to be the nondelivery to defendants of complainant's instructions specifying to whom cars were to be delivered. Demurrage charges assessed after receipt of such instructions found illegal and reparation awarded. *Sterling Lumber Co. v. Director General, as Agent, 432.*

ESTIMATED WEIGHT. *See* WEIGHT.

EVIDENCE. *See* PROOF.

EXCEPTIONS.

Proposal of the Norfolk & Western Ry. to eliminate the joint class rates on high explosives which now apply to stations on its line under exceptions to the classification, leaving higher combinations in effect, and to restrict the application of such rates to shipments moving to stations on the C. & O. and points beyond, found not justified as facts presented do not justify a departure from the joint class-rate basis prescribed in *Nitro Powder Co., 35 I. C. C., 77.* Restrictions in Routing Explosives via N. & W. Ry., 10.

The Commission has recognized the propriety of the action of various carriers reaching Chicago, Ill., in excepting certain commodities and classes of traffic from the provisions of the Lowrey tariff. *Illinois Brick Co. v. Director General, as Agent, 273 (280).*

EXPEDITED CASES.

Because the act requires the Commission to give preference to suspension proceedings over all other questions pending before it and to decide such proceedings as speedily as possible, the Commission proceeded to a disposition of such a proceeding in advance of other cases with which it had been consolidated. Coal from Detroit, Toledo & Ironton R. R. Mines, 564 (565).

EXPEDITED MOVEMENT.

Request for diversion could not be complied with owing to shipments having left originating carrier's rails. Request transmitted to connecting carriers but due to rapid movement of shipments, which were forwarded under special orders of the government, shipments had also left connecting carriers' rails and arrived at originally billed destination whence they were reconsigned. *Held*: Tariff of originating carrier only provided for transmission of such request to direct connection and connecting lines exercised due diligence in endeavoring to intercept shipments for diversion. Charges to and from reconsignment point assessed found not unreasonable or unlawful. *Du Pont de Nemours & Co. v. Director General*, as Agent, 667.

EXPLOSIVES. See DANGEROUS ARTICLES.

EXPORT AND DOMESTIC.

Prior to federal control San Francisco, Calif., and Seattle, Wash., were on a rate parity as to export traffic but due to the cancellation of all export rates by the Director General under general order No. 28, this adjustment disrupted. Rate applicable on pig lead moving from Granby, Mo., to Seattle, for export, found not unreasonable, discriminatory, or unduly prejudicial as compared with lower rate to San Francisco, or with rate established subsequent to movement when Seattle and San Francisco were again placed on a rate parity. *Mitsui & Co. v. Director General*, as Agent, 4.

Export rate on fuel oil, in tank-car loads, from Burkburnett, Tex., to Export Oil Spur, La., for export, found not unreasonable or unduly prejudicial as compared with lower domestic rate to New Orleans and other Louisiana ports, or as compared with rates on crude oil from the midcontinent field approved by the Commission in other cases, increased 4.5 cents pursuant to general order No. 28 of the Director General. *Wenger-Armstrong Petroleum Co. v. Director General*, as Agent, 175.

Contention that the maintenance of a higher export rate to one point than the contemporaneous domestic rate to a farther distant point over the same line in the same direction, was in violation of the long-and-short-haul provision of the fourth section, *Held*: In ascertaining whether the provisions of this section have been contravened rates of the same character must be compared. *Id.* (176).

Domestic rates on newsprint, book, and writing paper from Ladysmith, Wis., to Kalamazoo, Mich., and Hamilton and Urbana, Ohio, to Vancouver, B. C., and Tacoma, Wash., for export to China, assessed as a result of the cancellation of all export rates by the Director General under general order No. 28, found not unreasonable as compared with export rate higher than that formerly in effect and lower than domestic rates charged, subsequently established. *Ault & Wiborg Co. v. Director General*, as Agent, 186.

EXPORT AND DOMESTIC—Continued.

Due to the cancellation of all export rates by the Director General under general order No. 28, the previously existing relationship of rates on wheat between certain points in Kansas when milled in transit at Salina, Kans., and forwarded to New Orleans, La., for export, was destroyed and subsequently restored. *Held*: Higher rates charged on shipments moving during interim found not unreasonable as subsequently established rates were part of a general readjustment involving both increases and reductions. *Lee Flour Mills Co. v. Director General, as Agent, 226.*

Detention at the ports is not ordinarily intended by shippers, steamship companies, or carriers, and when it occurs is not of material benefit to them. The circumstances and conditions which are controlling in the case of traffic moving through the ports are substantially dissimilar from those which obtain in connection with domestic traffic. Many of the factors which tend to delay traffic intended for ocean movement do not exist in the case of domestic traffic. Decreased Free Time Allowance, 400 (403).

Domestic rate on soda ash from Painesville, Ohio, to Seattle, Wash., for export, assessed as a result of the cancellation of all export rates by the Director General under general order No. 28 found not unreasonable as compared with rates on other commodities which were subjected to a less percentage of increase than soda ash, or with export rate subsequently established. *Harper, Marshall & Thompson Co. (Inc.) v. Director General, as Agent, 599.*

EXPORT BILL OF LADING. *See also* BILLS OF LADING.

Rules and regulations made prescribing form of through export bill of lading to be issued by carriers subject to the act, for application to the transportation of property in connection with ocean carriers whose vessels are registered under the laws of the United States, from points in the United States designated under the provisions of section 25 of the act to points in nonadjacent foreign countries. *Export Bill of Lading, 347.*

Form proposed by the Commission in former report, 52 I. C. C., 671. Appendix A. *Id.* (347).

Form proposed by The National Industrial Traffic League. Appendix B. *Id.* (347).

Form submitted by carriers. Appendix C. *Id.* (347).

Form prescribed by the Commission. Appendix D. *Id.* (347).

The jurisdiction of the Commission to prescribe a uniform export bill of lading for shipments to nonadjacent foreign countries in connection with ocean carriers whose vessels are registered under the laws of the United States is one of law, but pending judicial interpretation of the pertinent provisions of the act the Commission must construe them in endeavoring to perform the administrative duties which they impose upon it. *Id.* (351).

The Commission's power to prescribe rules and regulations, not inconsistent with the act, which shall constitute and determine the form of the bill of lading, covers the terms or tenor of that instrument, and is, as to the transportation until delivery to the ocean carrier, adequate and complete. The intent of the Congress to require a uniform through export bill of lading and to have the terms thereof prescribed by the Commission seems clear. *Id.* (352).

EXPORT TRAFFIC. *See also* FOREIGN COMMERCE.

Proposed reduction in free time allowance at California ports on freight originating in California, except within the switching limits of the port of exit, and consigned to destinations in this and foreign countries reached by water lines, found not justified when for application to shipments moving in interstate or foreign commerce, because if allowed it will have effect of restricting the service incident to traffic to Atlantic ports moving by competitive water routes. Decreased Free Time Allowance, 400.

Delays in rail transportation to the port, belated delivery to dock, the uncertainties of the sea, necessary changes in sailing dates of steamers, and other equally disturbing factors result in car detention at the ports. *Id.* (403).

EXPRESS RATES.

Proposed first-class rating on flavoring extracts moving by express in official classification territory found not justified. Carrier contended that extracts are not articles of food or drink for which second-class rating was primarily established, but are food adjuncts. *Held:* Since this commodity falls within the description of "food" as defined in section 6 of the food and drugs act of 1906, contention not sustained. Classification Rating on Flavoring Extracts, 53.

Proposal of the American Railway Express Co., to increase the estimated weights on berries in pony refrigerators, from points in Florida to destinations throughout the United States, found not justified. The practical and only effect of the proposed increases would be a substantial increase in transportation charges and respondent has not shown that the application of the existing rates to such estimated weights will not result in unreasonable charges to the shipper. Weights on Berries in Pony Refrigerators, 610.

FACTOR. *See also* PROPORTIONAL RATES.

Combination rate on oats from Rosewood, La., to Natchez, Miss., found unreasonable to extent that the factor to New Orleans, La., exceeded the rate prescribed in *Natchez Chamber of Commerce*, 58 I. C. C., 610, on the same commodity for a like distance. Reparation awarded. *Rumble & Wensel Co. v. Director General*, as Agent, 199.

Both factors of combination rate on coal from Kenilworth, Utah, to Hillyard, Wash., increased under general order No. 28 of the Director General, the factor Spokane, Wash., to Hillyard being increased by application of the minimum class scale. Competitors on an industrial track in Spokane were charged the Spokane rate plus a switching charge. *Held:* While factor Spokane to Hillyard appears unreasonable, the through rate resulting from its use is not shown unreasonable but found unduly prejudicial to extent it exceeds the rate to Spokane by more than amounts herein prescribed. Reparation denied. *Edwards & Bradford Lumber Co. v. Director General*, as Agent, 503.

Minimum charge of \$15 per car assessed for the factor of a combination rate beyond L. & N. bridge, Cincinnati, Ohio, on empty glass bottles moving from Carrel Street station, Cincinnati, to Newport and Latonia, Ky., found unreasonable to the extent it exceeded minimum of \$6.50, maximum \$10 per car, subsequently established. Reparation awarded. *Boldt Glass Co. v. Director General*, as Agent, 619.

Through rate applicable on crude petroleum, in tank-car loads, from Beatyville, Ky., to Findlay, Ohio, found unreasonable due to the factor, Beatyville to Cincinnati, Ohio. Reparation awarded. *National Refining Co. v. Director General*, as Agent, 704.

FARES. *See* PASSENGER FARES. -

FEDERAL CONTROL.

Prior to federal control San Francisco, Calif., and Seattle, Wash., were on a rate parity as to export traffic but due to the cancellation of all export rates by the Director General this adjustment disrupted. Rate applicable on pig lead moving from Granby, Mo., to Seattle, for export, found not unreasonable, discriminatory, or unduly prejudicial as compared with lower rate to San Francisco, or with rate established subsequent to movement when Seattle and San Francisco were again placed on a rate parity. *Mitsui & Co. v. Director General, as Agent, 4.*

Minimum class-E rate, established June 25, 1918, pursuant to general order No. 28 of the Director General, and assessed on intrastate shipments of garbage from Minneapolis, Minn., to Spur No. 8, Minn., during federal control, found unreasonable to extent it exceeded the rate applicable prior to June 25, 1918, plus a 25 per cent increase. Reparation awarded. *Reservoir Heights Stock Ranch v. Director General, as Agent, 57.*

Reduced return rates were established by the Director General as emergency rates to prevent cattle from starving. Because of the high price of winter feed and under impression that such reduced rates would be applied, shipper sent his cattle south for wintering, which cattle were subsequently returned. *Held:* Since no emergency existed and there was no tariff authority for the reduced return rate on cattle moving from point of origin here involved, rates charged found not unreasonable. *Parks v. Director General, as Agent, 147.*

Contention that claim for reparation was barred under the act to regulate commerce and that section 206 (f) of the transportation act, 1920, enacted after the running of the prior statute, could not, by excluding the period of federal control, revive the claim. *Held:* Following *Thomas Iron Co., 57 I. C. C., 657*, contention not sustained. *Le Prestre Miller Stock Farms (Inc.) v. E. R. R. Co., 149 (150).*

Shipper urged that as carriers were under unified control and operation during federal control and not in competition, lower rate applicable via route other than route of movement should have been applied, *Held:* Fact that lines were under federal control did not affect the validity of the legally established rates over the separate routes and it was the duty of carrier to forward shipments via the cheapest available route consistent with routing instructions. *West Kentucky Coal Co. v. Director General, as Agent, 151 (152).*

Domestic rates on newspaper, book, and writing paper from Ladysmith, Wis., to Kalamazoo, Mich., and Hamilton and Urbana, Ohio, to Vancouver, B. C., and Tacoma, Wash., for export to China, assessed as a result of the cancellation of all export rates by the Director General under general order No. 28, found not unreasonable as compared with export rate higher than that formerly in effect and lower than the domestic rates charged, subsequently established. *Ault & Wiborg Co. v. Director General, as Agent, 186.*

Domestic rate on imported wood pulp from Newport News, to Big Island, Va., assessed as a result of the cancellation of all import rates under general order No. 28 of the Director General, found not unreasonable as compared with lower commodity rate subsequently established or with rate in effect via route other than route of movement. *Bedford Pulp & Paper Co. v. Director General, as Agent, 219.*

FEDERAL CONTROL—Continued.

The percentage of increase under general order No. 28 of the Director General is not controlling if the resulting rate is not unreasonable. *Id.* (220).

Due to the cancellation of all export rates by the Director General under general order No. 28, the previously existing relationship of rates on wheat between certain points in Kansas when milled in transit at Salina, Kans., and forwarded to New Orleans, La., for export, was destroyed and subsequently restored. *Held*: Higher rates charged on shipments moving during interim found not unreasonable as subsequently established rates were part of a general readjustment involving both increases and reductions. *Lee Flour Mills Co. v. Director General*, as Agent, 226.

Following *Maltby Case*, 63 I. C. C., 103, chrome ore found to be a commodity distinct from and more valuable than iron ore, and mere fact that it was subjected to a different measure of increase than iron ore under general order No. 28 of the Director General, does not establish the unreasonableness of the rate charged. *Maltby v. Director General*, as Agent, 297.

Rates on imported flint pebbles which were subjected to an increase of 25 per cent under general order No. 28 of the Director General, found not unreasonable as compared with rates on other commodities which were accorded a flat increase under the terms of that order and with which flint pebbles do not compete. *Silica Sand Producers Traffic Asso. v. C., B. & Q. R. R. Co.*, 302.

Contention that increase of 25 per cent in the rates on flint pebbles was contrary to the provisions of general order No. 28, and that there was no justification or authority for imposing a greater increase on flint pebbles than on sand and gravel, which were accorded a flat increase of 1 cent per 100 pounds, *Held*: The term "sand and gravel," as ordinarily used and as used in general order No. 28 would not include grinding pebbles, a higher-grade commodity serving a different purpose, and the reasonableness of rates can not be determined by a construction of that order. *Id.* (304).

Following *American Trading Co.*, 60 I. C. C., 273, domestic rates applicable on imported straw braid and hemp braid, assessed as a result of the cancellation by the Director General of all import rates under general order No. 28, found not unreasonable or unduly prejudicial as compared with import rates subsequently established. *Peabody & Co. v. Director General*, as Agent, 429.

Complainant routed shipments via higher rated routes because it desired prompt delivery and there was a rumor that lower rated route was congested. Contention that, as the railroads were being operated by the Director General as a unified system, there was no justification for the maintenance of rates over routes of movement different from those in effect via other routes, *Held*: Complainant routed shipments to suit its own purposes, and mere showing of lower rates over other routes does not warrant condemnation of the rates over the routes of movement, even though shipments moved during federal control. *Pfeister & Vogel Leather Co. v. Director General*, as Agent, 437.

FEDERAL CONTROL—Continued.

The mere showing of the fact that in making effective the increases provided in general order No. 28 of the Director General, a slight disturbance was created in the percentage relationship which a specific rate bore to other rates between the same points, and the subsequent voluntary restoration of that relationship, does not warrant a condemnation of the rate in effect during the interim. *Ault & Wiborg Co. v. Director General*, as Agent, 443.

Allegation of unreasonableness due to the application by carriers of the increases under general order No. 28 of the Director General to each factor instead of but once to the through combinations, *Held*: Reasonableness of such rates can not be determined solely from the method of their construction. *Pioneer Lumber Co. v. Director General*, as Agent, 485 (486).

Upon theory that the Springfield and southern Illinois groups were differentially related, the Wabash and Chicago & Alton railroads increased their rates under general order No. 28 on fine coal to Kansas City, Mo. Subsequently the Alton reduced its rates by applying the increase without regard to any differential relationship, which widened the spread existing between those carriers. Later the Wabash restored the former spread by also reducing its rate. Rate applicable on shipments moving during period when higher spread in effect found not unreasonable. *Consolidated Coal Co. v. Director General*, as Agent, 536.

Rate on vegetable oils, in tank-car loads, imported from the Orient and moving from Everett and Tacoma, Wash., to Seattle, Wash., during federal control, assessed as a result of the cancellation of all import rates by the Director General under general order No. 28, found not unreasonable as compared with lower rate on soya-bean oil, which lower rate was subsequently made applicable to all vegetable oils. *Mitsui & Co. v. Director General*, as Agent, 585.

Domestic rate on soda ash from Painesville, Ohio, to Seattle, Wash., for export, assessed as a result of the cancellation of all export rates by the Director General under general order No. 28, found not unreasonable, as compared with rates on other commodities which were subjected to a less percentage of increase than soda ash, or with export rate subsequently established. *Harper, Marshall & Thompson Co. (Inc.) v. Director General*, as Agent, 599.

Domestic rate on antimony from Seattle, Wash., to Chicago, Ill., assessed as a result of the cancellation of all import rates by the Director General under general order No. 28 found unreasonable as compared with lower domestic rate from California terminals to eastern defined groups, which lower rate was subsequently made applicable to both import and domestic shipments between points here involved. Reparation awarded. *Great Western Smelting & Refining Co. v. Director General*, as Agent, 605.

Contention that the transportation act, 1920, could not constitutionally revive a cause of action, the limitation period of which had expired under the interstate commerce act, not sustained following *Hirth-Krause Co.*, 61 I. C. C., 350 and similar cases. *Armour & Co. v. C. & N. W. Ry. Co.*, 641.

FEDERAL CONTROL—Continued.

Contention that as carriers during federal control were being operated as a unified system by the Director General, that the agent of a carrier was the agent of the Director General, and as such it was his duty to telegraph request for diversion to the last gateway through which he knew the traffic would pass, *Held*: Not sustained as it was not the purpose of the federal control act or of the orders of the Director General in operating under that act to alter or nullify the rates and other provisions of the lawful tariffs. *Du Pont de Nemours & Co. v. Director General*, as Agent, 667 (670).

Combination rate on petroleum refined oil, in tank-car loads, from Cabin Creek Junction, W. Va., to Bowling Green, Ky., both factors of which were increased 4.5 cents under general order No. 28 of the Director General, found unreasonable to extent it exceeded the through rate plus a single flat increase, subsequently established, and unduly prejudicial as compared with the rate from Falling Rock, W. Va., a farther distant competing point from which but a single increase to the through rate was applied. Reparation awarded. *Pure Oil Co. v. Director General*, as Agent, 688.

Contention that combination rates were unreasonable because increase authorized under general order No. 28 of the Director General was applied to each factor instead of but once to the through rate. *Held*: Manner in which rates are constructed is but one of the elements to be considered in reaching proper conclusions. *Madison Lumber & Mill Co. v. Director General*, as Agent, 699 (700).

Following *Sligo Iron Store Co.*, 62 I. C. C., 643, where one of the tariffs used in making combination rates on through shipments contained a rule that such rates will be subject to the increase authorized under general order No. 28 but once, and tariffs of the other carriers participating in the movement did not publish the clause or refer to any other tariff publishing such a rule, there is a holding out to the shipper of the rate so constructed which carriers should protect. *Id.* (701).

Contention that since all carriers were under federal control the same rates should have applied over all routes between the same points, not sustained where circumstances and conditions via the different routes are dissimilar; and fact that lower rates applied between the same points over other available routes does not, standing by itself, prove the unreasonableness of the higher rates via route of movement. *Midland Linseed Products Co. v. Director General*, as Agent, 753.

FINDINGS OF COMMISSION. *See* ORDERS OF COMMISSION.

FLEXIBLE LIMIT OF JUDGMENT.

The duty case upon the Commission by section 15a is continuing and looks to the future. It does not constitute a guaranty to the carriers, nor is the obligation cumulative. The Commission is not restricted by past or present statistics of operation and earnings. These are serviceable only as they illuminate the future. What is contemplated by the law is that in this exercise of rate-making power the result shall reflect the Commission's best judgment as to the basis which may reasonably be expected for the future to yield the prescribed return. Rates on Grain, Grain Products, and Hay, 85 (99).

FLUCTUATIONS.

Experience has shown the limitations which surround in actual practice the operation of section 15a of the act. When it became apparent that the general increases of 1920, intended to give carriers a specified return, failed by a considerable margin to reach the desired mark, carriers and shippers alike agreed that it was not the Commission's duty to raise rates to still higher levels. To have done this would clearly have been a vain thing, harmful alike to the country and to the carriers. The rate adjustment can not with advantage be made dependent upon fluctuations in traffic. Rates on Grain, Grain Products, and Hay, 85 (99).

FOOD.

Section 6 of the food and drugs act of 1906 defines "food" as used therein to "include all articles used as food, drink, confectionery, or condiment by man or other animals, whether simple, mixed, or compound." Classification Rating on Flavoring Extracts, 53 (54).

FOREIGN COMMERCE. *See also* EXPORT TRAFFIC.

Rules and regulations made prescribing form of through export bill of lading to be issued by carriers subject to the act for application to the transportation of property, in connection with ocean carriers, whose vessels are registered under the laws of the United States, from points in the United States designated under the provisions of section 25 of the act to points in nonadjacent foreign countries. Export Bill of Lading, 347.

Conclusion reached in former report 52 I. C. C., 671, 727, that the Cummins amendment does not apply to transportation from a point in the United States to a point in a nonadjacent foreign country, adhered to. *Id.* (354).

FOREIGN COUNTRY. *See* CANADA; FOREIGN COMMERCE.**FRANCHISE.**

Intrastate passenger fares of the Pennsylvania-Ohio Power & Light Co., an interurban electric line, required by franchise contract to be maintained between Hubbard and Youngstown, Ohio, and which are lower than the corresponding interstate fares between Sharon, Pa., and Hubbard, and between Sharon and Youngstown, found unduly preferential of intrastate passengers, unduly prejudicial to interstate passengers, and unjustly discriminatory against interstate commerce. Ohio Rates, Fares, and Charges, 493.

If the maintenance of intrastate passenger fares fixed by a franchise contract results in unjust discrimination against interstate commerce, it is within the Commission's power to remove it by prescribing other and different intrastate fares. *Id.* (498).

Intrastate passenger fares of the Steubenville, East Liverpool & Beaver Valley Traction Co., an interurban electric line, required by ordinance or franchise contracts to be maintained between points in Ohio, and which are lower than the corresponding interstate fares between points in Pennsylvania and points in Ohio, found unduly preferential of intrastate passengers, unduly prejudicial to interstate passengers, and unjustly discriminatory against interstate commerce. Ohio and Pennsylvania Rates, Fares, and Charges, 517.

FRANCHISE—Continued.

While it may be argued under *Omaha Street Railway Case*, 230 U. S., 324, that the Commission has no jurisdiction over a city street-car line, it can not be seriously contended that the federal government in its efforts to prevent discrimination is to be prevented by municipalities which, in franchises involving the use of their local streets, assume to regulate the rates to and between other cities; and particularly when such franchises impose rates which are unjust and menace the maintenance of interstate transportation facilities and service. Id. (524).

FREE TIME.

Proposed reduction in, at California ports on freight originating in California, except within the switching limits of the port of exit, and consigned to destinations in this and foreign countries reached by water lines, found not justified when for application to shipments moving in interstate or foreign commerce, because if allowed it will have effect of restricting the service incident to traffic to Atlantic ports moving by competitive water routes. Decreased Free Time Allowance, 400.

FREEZING.

Proposed rule eliminating the state of Illinois, and that portion of Indiana lying within the Chicago switching district, from the territory in which carriers' protective service against cold is now available, and withdrawing such service on traffic originating outside the so-called cold-weather zone, found not justified as the extension and development of protective service against cold, originally proposed and strongly urged by the Commission in *Perishable Freight Investigation*, 56 I. C. C., 449, would be extremely unlikely. Heater Service for Fresh Fruits and Vegetables, 283. The value of protective service against cold to the shipper in insuring against loss and damage, to the carrier in stimulating traffic, and to the nation in conserving the food supply, makes it imperative that no individual railroad be permitted to hinder its further development. Id. (288).

Demurrage charges accruing on cars of sand which arrived in frozen condition, thus causing delay in unloading and resulting in subsequent shipments being constructively placed on tracks in the vicinity of complainant's plant or in railroad yards, found not unreasonable or otherwise unlawful as complainant failed to comply with tariff requirement which provided for the service upon carrier's agent of written notice or statement that lading was frozen when tendered. *Hamilton Foundry & Machine Co. v. Director General*, as Agent, 439.

FURTHER HEARING. See also SUPPLEMENTAL REPORT.

Upon further consideration, findings in previous report, 58 I. C. C., 716, respecting rates on coffee from the Gulf ports to middle western territory, modified. Coffee from Galveston and other Gulf Ports, 26.

Upon further hearing, order for removal of undue prejudice and unjust discrimination entered in original report, 59 I. C. C., 290, modified by striking therefrom the name of the Fonda, Johnstown & Gloversville R. R. Co., which carrier does not "participate in the transportation" as that term is used in the order. Rates, Fares, and Charges of the N. Y. C. R. R. Co., 55.

Upon further hearing, certain carriers authorized to reduce rates on gasoline from Somerset to San Antonio, Tex., and on gasoline and fuel oil from Grand Prairie to Dallas, Tex., to a basis lower than prescribed in the *Shreveport Case*, 48 I. C. C., 312, in order to meet motor-truck competition and keep the traffic to their rails. Railroad Commission of Louisiana v. A. H. T. Ry Co., 197.

FURTHER HEARING—Continued.

On further hearing, intrastate rates on sand and gravel from Hart Spur to Fort Worth, Tex., excepted from findings in former report, 48 I. C. C., 312, as such rates would or could not result in any undue prejudice to Shreveport, La., and since the undue prejudice complained of is wholly in respect of intrastate traffic to Fort Worth from Hart Spur and Bonner Spur, respectively, the Commission is without jurisdiction, the remedy lying with the state authority. *Railroad Commission of Louisiana v. A. H. T. Ry. Co.*, 248.

Upon further hearing, former report, 52 I. C. C., 671, rules and regulations made prescribing form of through export bill of lading to be issued by carriers subject to the act for application to the transportation of property, in connection with ocean carriers, whose vessels are registered under the laws of the United States, from points in the United States designated under the provisions of section 25 of the act to points in nonadjacent foreign countries. *Export Bill of Lading*, 347.

Upon further hearing, rules and regulations made in *Bills of Lading*, 52 I. C. C., 671, prescribing form of uniform domestic bill of lading and uniform live-stock contract, modified to conform to the requirements of the interstate commerce act as amended by the transportation act, 1920. *Domestic Bill of Lading and Live Stock Contract*, 357.

Upon further hearing, combination rates to and from Jacksonville, Fla., on stock cattle moving from certain points in Florida and from Birmingham, Ala., to Memphis, Tenn., based upon comparisons of car-mile and ton-mile earnings with various other commodities, found unreasonable as to certain shipments but not as to others. Reparation awarded. Former report 42 I. C. C., 261, modified. *Miller Bros. v. St. L. & S. F. R. R. Co.*, 593.

Upon further hearing, charge for transportation of live stock from stock-yards of the Belt R. R. & Stock Yards Co. at Indianapolis, Ind., to the plant of Kingan & Co., Inc., at that place found not to result in undue preference of persons or localities in intrastate commerce, undue prejudice to persons or localities in interstate commerce, or in unjust discrimination against interstate commerce. Former report, 60 I. C. C., 337, modified so as to except such charge from its provisions. *Indiana Rates, Fares, and Charges*, 645.

Upon further hearing and following *Interior Iowa Cases*, 28 I. C. C., 64; 29 I. C. C., 536; and 46 I. C. C., 39, combination through rates on walnut dimension lumber from Des Moines, Iowa, to points east of the Indiana-Illinois state line, or for export, found unreasonable and unduly prejudicial to extent that the proportional commodity rates from Des Moines to upper Mississippi River east bank crossings exceed 57 per cent of the corresponding proportional commodity rates from the Missouri River cities to Mississippi River crossings. Original report, 53 I. C. C., 484. *Railroad Commissioners of Iowa v. M. & St. L. R. R. Co.*, 673.

Upon further hearing as to situations disclosed, certain interstate rates found to be the corresponding interstate rates to the level of which the intrastate rates within Kansas should be increased to remove the undue prejudice and discrimination found in the original report, 62 I. C. C., 440. *Kansas Rates, Fares, and Charges*, 679.

FURTHER HEARING—Continued.

Upon further hearing, former reports 46 I. C. C., 527, and 50 I. C. C., 605, original finding that under the existing rate adjustment there is undue prejudice to Johnson City, Tenn., and undue preference of Bristol, Va.-Tenn., reaffirmed. Reasonable maximum bases prescribed. Chamber of Commerce of Johnson City, Tenn., *v.* S. Ry. Co., 709.

GATEWAYS.

Proposed cancellation of existing basis for rates on cast-iron pipe and pipe connections from certain points in Tennessee and Alabama to Montana destinations, and application in lieu thereof of the normal basis of combination rates on St. Louis, Mo., so as to permit the traffic to move under the same rates through the different gateways, found justified. Proposed rates compare favorably with rates on cast-iron pipe and on other iron and steel articles from Pittsburgh, Pa., Columbus, Ohio, and Chicago, Ill., to the same Montana destinations. Cast-iron Pipe from Birmingham, 638.

GENERAL ORDER No. 28. *See* **FEDERAL CONTROL.**

GROUP RATES. *See also* **BLANKET RATES.**

Proposed increased rates on lumber and other commodities between El Paso, Tex., and points in Oregon, Washington, Utah, and Idaho from 25 to 33½ per cent over rates in effect on August 25, 1920, for purpose of restoring El Paso to transcontinental group H, found not justified. Lumber Rates between El Paso and Western Points, 12.

Rates on petroleum products from the midcontinent oil field in Kansas and Oklahoma to Alton, Iowa, Pipestone, Minn., and Beresford, S. D., found not unreasonable as they compare favorably with rates to the same destinations from other producing points and a finding of unreasonableness would necessitate disturbance of the present rate adjustment and result in a general reduction in rates over a large territory. Coal *v.* C., St. P., M. & O. Ry. Co., 178.

In any group arrangement it is usually possible to pick out particular points the rates to which, because of operating conditions, competition, or other reasons, do not appear properly aligned when considered solely from the standpoint of distance. *Id.* (180).

Upon theory that the Springfield and southern Illinois groups were differently related, the Wabash and Chicago & Alton railroads increased their rates under general order No. 28 on fine coal to Kansas City, Mo. Subsequently the Alton reduced its rates by applying the increase without regard to any differential relationship, which widened the spread existing between those carriers. Later the Wabash restored the former spread by also reducing its rate. Rate applicable on shipments moving during the period when higher spread in effect found not unreasonable. Consolidated Coal Co. *v.* Director General, as Agent, 536.

A proper rate relationship between competitive groups, particularly on such a commodity as coal, is in many respects of greater importance to the shipping public than the measure of the rate itself. Coal from Detroit, Toledo & Ironton R. R. Mines, 564 (566).

"HIGHEST RATE AND MINIMUM WEIGHT."

Contention that phrase in tariff means the highest rate and highest minimum weight, sustained. Minimum Weight on Live Stock in Mixed Carloads, 546.

IMPORT AND DOMESTIC.

Domestic rate on imported wood pulp from Newport News to Big Island, Va., assessed as a result of the cancellation of all import rates under general order No. 28 of the Director General, found not unreasonable as compared with lower commodity rate subsequently established or with rate in effect via other than route of movement. *Bedford Pulp & Paper Co. v. Director General*, as Agent, 219.

Following *American Trading Co.* 60 I. C. C., 273, domestic rates applicable on imported straw braid and hemp braid, assessed as a result of the cancellation by the Director General of all import rates under general order No. 28, found not unreasonable or unduly prejudicial as compared with import rates subsequently established. *Peabody & Co. v. Director General*, as Agent, 429.

Rate on vegetable oils, in tank-car loads, imported from the Orient and moving from Everett and Tacoma, Wash., to Seattle, Wash., during federal control, assessed as a result of the cancellation of all import rates by the Director General under general order No. 28, found not unreasonable as compared with lower rate on soya-bean oil, which lower rate was subsequently made applicable to all vegetable oils. *Mitsui & Co. v. Director General*, as Agent, 585.

Domestic rate on antimony from Seattle, Wash., to Chicago, Ill., assessed as a result of the cancellation of all import rates by the Director General under general order No. 28 found unreasonable as compared with lower domestic rate from California terminals to eastern defined groups, which lower rate was subsequently made applicable to both import and domestic shipments between points here involved. Reparation awarded. *Great Western Smelting & Refining Co. v. Director General*, as Agent, 605.

INBOUND AND OUTBOUND.

Lumber rates applicable on logs moving during federal control from Beebe, Hawthorne, and Gordon, Wis., to Hayward, Wis., for manufacture and reshipment over the lines of the carrier having the inbound haul, found unreasonable as compared with those in effect over other lines in Wisconsin and Michigan for similar distances, prescribed in *Saw Logs Between Michigan and Wisconsin Points*, 69 I. C. C., 350. Reparation awarded. *Willow River Lumber Co. v. Director General*, as Agent, 575.

Rates on logs for manufacture and reshipment over the rails of the carrier having the inbound haul are often lower than the lumber rates between the same points. *Id.* (576).

Jobbers' rates, made up of combinations of inbound and outbound rates are of little probative value where only the inbound or the outbound rates are under attack. *Chamber of Commerce of Johnson City, Tenn., v. S. Ry. Co.*, 709 (723).

INCREASED RATES. *See* ADVANCE IN RATES.

INDIRECT ROUTES. *See* CIRCUITOUS ROUTE; OUT-OF-LINE HAUL.

INDUSTRIAL SWITCHING. *See also* SWITCHING.

Increased charges resulting from the refusal of trunk line carriers to pay an allowance to complainant or its industrial line for terminal switching and spotting to and from its plant at Pittsburgh, Pa., while performing like services without additional charge for other industries in the same district, found to have resulted in unreasonable charges but not in undue prejudice by reason of uncertainty as to whether competitors were similarly circumstances as to operating conditions. Reparation awarded from earliest date within the period of the statute of limitations down to the date when such allowances were again restored. *Oliver Iron & Steel Co. v. P. & L. E. R. R. Co.*, 447.

INTENTION OF CONGRESS. *See* CONSTRUCTION OF STATUTE.

INTERCHANGE SWITCHING. *See also* SWITCHING.

Proposed cancellation of charges on c. l. traffic from interchange tracks in Topeka, Kans., to certain outlying industries and institutions adjacent thereto, which would result in application of higher rates published in road-haul tariffs which could not be absorbed by connecting lines at Topeka under their switching absorption rules, found not justified. Interchange Switching at Topeka, 259.

INTERMEDIATE POINTS. *See* TARIFF CIRCULAR 18-A.

INTERTERMINAL SWITCHING. *See* SWITCHING.

INTERVENORS.

Upon supplemental report, proof having been submitted and defendants having agreed to accept an affidavit covering certain shipments, reparation awarded certain intervenors upon shipments on which charges were paid at rates found unreasonable in second supplemental report, 57 I. C. C., 584. Original and first supplemental reports, 37 I. C. C., 652 and 53 I. C. C., 741. Cotton Mfrs. Asso. of S. C. v. C. & O. Ry., 633.

INTERURBAN ROADS.

Intrastate passenger fares of the Pennsylvania-Ohio Power & Light Co., an electric line, required by franchise contract to be maintained between Hubbard and Youngstown, Ohio, and which are lower than the corresponding interstate fares between Sharon, Pa., and Hubbard, and between Sharon and Youngstown, found unduly preferential of intrastate passengers, unduly prejudicial to interstate passengers, and unjustly discriminatory against interstate commerce. Ohio Rates, Fares, and Charges, 493.

Intrastate passenger fares of the Steubenville, East Liverpool & Beaver Valley Traction Co., an electric line, required by ordinance or franchise contracts to be maintained between points in Ohio, and which are lower than the corresponding interstate fares between points in Pennsylvania and points in Ohio, found unduly preferential of intrastate passengers, unduly prejudicial to interstate passengers, and unjustly discriminatory against interstate commerce. Ohio and Pennsylvania Rates, Fares, and Charges, 517.

Contention that merger of electric railways, originally performing purely intrastate and city street-car service, into an operating company now performing an interstate interurban business, does not change their original status. *Held*: Whatever may have been the original service afforded by the respective railways at the time of the merger, the consolidated company now is carrying on much more than a street railway business and in its interurban operations it now assumes the status of an electric railway and as such is engaged in interstate transportation. *Id.* (524).

While it may be argued under *Omaha Street Railway Case*, 230 U. S., 324, that the Commission has no jurisdiction over a city street-car line, it can not be seriously contended that the federal government in its efforts to prevent discrimination is to be prevented by municipalities which, in franchises involving the use of their local streets, assume to regulate the rates to and between other cities; and particularly when such franchises impose rates which are unjust and menace the maintenance of interstate transportation facilities and service. *Id.* (524).

INTRASTATE RATES. *See* STATE RATES.

64 I. C. C.

INVESTIGATION.

Upon investigation, grain, grain products, and hay, on the whole, found to be bearing such a disproportionate share of transportation charges as to stifle and place a burden upon the industry. Rates within the western and mountain Pacific groups, as defined in *Increased Rates, 1920*, 58 I. C. C., 220, found unjust and unreasonable for the future and reductions required. Rates on Grain, Grain Products, and Hay, 85.

ISOLATED SHIPMENT. *See* SPORADIC MOVEMENT.

ISSUE.

Where issue is whether charges collected for a specified service were unreasonably high, question as to whether that service be termed a line haul or switching movement not decided. *Boldt Glass Co. v. Director General*, as Agent, 619 (620).

JOBBER'S RATES.

Made up of combinations of inbound and outbound rates are of little probative value where only the inbound or the outbound rates are under attack. *Chamber of Commerce of Johnson City, Tenn., v. S. Ry. Co.*, 709 (723).

JOINT RATES.

A fair measure of the reasonableness of a joint rate which exceeds a combination between the same points over the same route is the lowest combination over the route of movement which would apply if the joint rates were canceled. *Empire Cotton Oil Co. v. Director General*, as Agent, 64.

Under the powers conferred by section 6 of the act, the Commission has promulgated certain rules and regulations governing the form and construction of tariffs which require that rates be explicitly stated and arranged in a systematic manner. They do not require the publication of joint rates from and to all points. *Boston Wool Trade Assn. v. A. & S. Ry. Co.*, 365 (383).

Establishment of, on ore and concentrates from Paxton and Engels, Calif., to Wabuska, Nev., found desirable in the public interest, and existing rates for such transportation found unreasonable for the future to extent they exceed scale based upon released values, herein prescribed. *Mason Valley Mines Co. v. W. P. R. R. Co.*, 477.

In considering a prayer for the establishment of, the effect upon the possible diversion of traffic should be given consideration; but the desire of a carrier to retain traffic to its own lines should not be permitted to outweigh the public interest if the establishment thereof is shown to be necessary or desirable. *Id.* (481).

The public interest at the point of delivery is to be considered as well as that at the point of origin in considering a prayer for the establishment of. *Id.* (482).

JURISDICTION.

Undue prejudice wholly in respect of intrastate traffic is not within the Commission's jurisdiction, the remedy lying with the state authorities. *Railroad Commission of Louisiana v. A. H. T. Ry. Co.*, 248 (250).

To prescribe a uniform export bill of lading for shipments to nonadjacent foreign countries in connection with ocean carriers whose vessels are registered under the laws of the United States is one of law, but pending judicial interpretation of the pertinent provisions of the act the Commission must construe them in endeavoring to perform the administrative duties which they impose upon it. *Export Bill of Lading*, 347 (351).

JURISDICTION—Continued.

The Commission's power to prescribe rules and regulations, not inconsistent with the act, which shall constitute and determine the form of the bill of lading, covers the terms or tenor of that instrument, and is, as to the transportation until delivery to the ocean carrier, adequate and complete. And the intent of the Congress to require a uniform through export bill of lading and to have the terms thereof prescribed by the Commission seems clear. *Id.* (352).

Carriers challenge the Commissions' power to do more than prescribe the "form" as distinguished from the substance of a bill of lading, but such interpretation would imply that each carrier could insert its own peculiar phraseology in its bill of lading. The intention of Congress to have a uniform bill of lading prescribed by the Commission is clearly indicated in section 25, under which the Commission is also required to "preserve for carriers by water the protection of limited liability provided by law," and this can not be done by specifying color of paper or size of type. *Id.* (352).

The Commission is without power to order refund of war taxes. *Sterling Lumber Co. v. Director General*, as Agent, 432 (434).

The Commission has jurisdiction of the rates on shipments from points in the United States to points in Canada only so far as the movement was within the United States. *Van Dusen Harrington Co. v. Director General*, as Agent, 461.

If the maintenance of intrastate passenger fares fixed by a franchise contract results in unjust discrimination against interstate commerce, it is within the Commission's power to remove it by prescribing other and different intrastate fares. *Ohio Rates, Fares, and Charges*, 493 (493).

The Commission may not adjust rates to equalize natural advantages or disadvantages of geographical location. *Pacific Portland Cement Co. v. Director General*, as Agent, 507 (509).

While it may be argued under *Omaha Street Railway Case*, 230 U. S., 324, that the Commission has no jurisdiction over a city street-car line, it can not be seriously contended that the federal government in its efforts to prevent discrimination is to be prevented by municipalities which, in franchises involving the use of their local streets, assume to regulate the rates to and between other cities; and particularly when such franchises impose rates which are unjust and menace the maintenance of interstate transportation facilities and service. *Ohio and Pennsylvania Rates, Fares, and Charges*, 517 (524).

That a carrier may by contract employ the owner of property transported to perform a portion of the transportation service is recognized by section 15 of the act. The effect of such a contract is to determine the amount to be paid for the services rendered. The Commission's duty is to take care lest the sum paid becomes so large as to amount to an unlawful concession from the transportation rate; and it may determine what is a reasonable charge as the maximum to be paid by the carrier, and fix the same by appropriate order. *Cambria Steel Co. v. Director General*, 737 (740-741).

The Commission is without power to require carriers to pay allowances to shippers for spotting. *A fortiori*, it can not compel a carrier to increase an allowance of this kind on the sole ground that it is inadequate to cover the cost to the shipper whom it has employed to perform the particular service. *Id.* (741).

LACHES.

Only justification offered for proposed increased charge was that it should have been increased to basis approved in *Increased Rates, 1920*, 58 I. C. C., 220, but as time limit prescribed in that case had expired prior to the filing and effective date of the suspended schedules, justifications must be based upon other foundations. Storage Charges on Apples and Pears, 627.

LAKE AND RAIL.

Proportional commodity rate from Duluth, Minn., to Boston, Mass., lake and rail, on wool and mohair in the grease, in bags, sacks, and machine pressed bales, found unreasonable for the future and reasonable maximum rates prescribed. *Boston Wool Trade Asso. v. A. & S. Ry. Co.*, 365 (380).

LEGAL RATES.

Combination rate on pig lead from Granby, Mo., to Seattle, Wash., exceeded lower combination applicable under Rule 5 (b) of Tariff Circular 18-A. Refund of overcharges directed. *Mitsui & Co. v. Director General*, as Agent, 4.

Point formerly reached by a narrow gauge line over which an out-of-line charge was established. Before shipments moved line made standard-gauge and became part of the main line thus rendering the out-of-line haul unnecessary, but charge for the extra service was not eliminated from tariff until after shipments moved. Charges assessed for unperformed out-of-line movement found illegal. Reparation awarded. *Grayson Owen Co. v. Director General*, as Agent, 157.

Following *Aetna Explosives Co.*, 52 I. C. C., 235, charges on new empty tank cars moving on their own wheels from Milton, Pa., to various destinations in the Carolinas found illegal to the extent they exceeded the combination of rates based on official and southern classification ratings to and from Lynchburg and Petersburg, Va. Refund directed. *Proctor & Gamble Co. v. Director General*, as Agent, 637.

Upon supplemental report, and following *Sligo Iron Store Co.*, 62 I. C. C., 643, rate legally applicable found to be the through combination rate plus single increase as provided under general order No. 28 of the Director General, as one of the tariffs used in making combination rates on through shipments contained a rule that such rates would be subject to a single increase and there was a holding out to the shipper of the rate so constructed which carrier should protect. Refund directed. Former report 59 I. C. C., 246. *Indian Refining Co. (Inc.) v. Director General*, as Agent, 643.

LESS THAN CARLOADS. *See also ANY QUANTITY RATES; CARLOADS AND LESS THAN CARLOADS.*

Proposed l. c. l. ratings and increased carload minimum on garden tractors in official, western and southern classification territories, found justified. More tractors made by protestant are sold in carloads than in less-than-carloads, and record shows that all other garden tractors load up to and in excess of the proposed minimum. Carload Minimum Weight on Garden Tractors, 1.

LIABILITY. *See also LIMITATION OF LIABILITY.*

The conditions of a bill of lading regarding the liability of the carriers affect "the value of the service rendered to the * * *, shipper, or consignee" within the meaning of section 6 of the act. Export Bill of Lading, 347 (352).

LIKE KINDS OF TRAFFIC. *See also* ANALOGOUS ARTICLES; COMPARATIVE RATES.

Bull-wheel material on the one hand, and lumber on the other, do not constitute such "like traffic" that a different charge for their transportation is violative of section 2 of the act. *Parkersburg Rig & Reel Co. v. Director General*, as Agent, 568 (573).

LIMITATION OF ACTION.

Contention that claim was barred under the act to regulate commerce and that section 206 (f) of the transportation act, 1920, enacted after the running of the prior statute, could not by excluding the period of federal control, revive the claim, *Held*: Following *Thomas Iron Co.*, 57 I. C. C., 657, contention not sustained. *Le Prestre Miller Stock Farms (Inc.) v. E. R. R. Co.*, 149 (150).

Complaint filed informally within two-year period and formally within six months after notification that it could not be disposed of informally, as required by paragraph (g), rule III, of the Commission's Rules of Practice, found not barred. *Gulf Refining Co. v. St. L.-S. F. Ry. Co.*, 201.

Contention that the transportation act, 1920, could not constitutionally revive a cause of action, the limitation period of which had expired under the interstate commerce act, not sustained following *Hirth-Krause Co.*, 61 I. C. C., 350 and similar cases. *Armour & Co. v. C. & N. W. Ry. Co.*, 641.

LIMITATION OF LIABILITY.

The greater the risk incurred by carriers in connection with transportation covered by bills of lading, the greater the value to the shipper of the service rendered, which should be rewarded correspondingly. A lesser compensation is appropriate in cases where the carrier is to a large extent relieved from full liability. *Export Bill of Lading*, 347 (354).

Conclusion reached in former report 52 I. C. C., 671, 727, that the Cummins amendment does not apply to transportation from a point in the United States to a point in a nonadjacent foreign country, adhered to. *Id.* (354).

Suggestions made on behalf of various steamship lines, operating in the coastwise service, which would have the effect of limiting the liability of such carriers by inserting in the uniform bill of lading prescribed by the Commission certain water-line clauses. Appendix C. *Domestic Bill of Lading and Live Stock Contract*, 357 (360).

LINE HAUL.

Where issue is whether charges collected for a specified service were unreasonably high, question as to whether that service be termed a line haul or switching movement not decided. *Boldt Glass Co. v. Director General*, as Agent, 619 (620).

LIVE STOCK CONTRACT.

Rules and regulations made prescribing form of uniform live stock contract. *Domestic Bill of Lading and Live Stock Contract*, 357.

Form of uniform live stock contract proposed by representatives of carriers and shippers. Appendix E. *Id.* (357).

Form of uniform live stock contract prescribed by the Commission. Appendix F. *Id.* (357).

LOADING.

Proposed l. c. l. ratings and increased carload minimum on garden tractors in official, western, and southern classification territories found justified. More tractors made by protestant are sold in carloads than in less-than-carloads, and record shows that all other garden tractors load up to and in excess of the proposed minimum. *Carload Minimum Weight on Garden Tractors*, 1.

LOADING—Continued.

The car-loading of a commodity is of importance in determining the rate, absolutely and relatively. Rates on Grain, Grain Products, and Hay, 85 (92).

LOCAL RATES. See COMBINATION RATES.

LOCATION.

The Commission may not adjust rates to equalize natural advantages or disadvantages of geographical location. Pacific Portland Cement Co. v. Director General, as Agent, 507 (509).

LONG AND SHORT HAUL.

In General:

Fact that keen market competition exists which has influenced the making of rates in the past, and the further fact that parties are practically agreed that complete fourth section relief should be granted, are not in themselves sufficient to justify such action on the part of the Commission. Coffee from Galveston and other Gulf Ports, 26 (29-30).

In granting fourth section relief it is necessary to consider not only the letter but the spirit of the law and the interests of the destination territory. Id. (30).

The tendency of both Congress and the Commission in recent years has been to restrict more and more the granting of fourth section relief. Id. (30).

By the transportation act, 1920, if authority is granted a circuitous line to meet the charges of a more direct line at competitive points and maintain higher charges at intermediate points, "the authority shall not include intermediate points as to which the haul of the petitioning line or route is not longer than that of the direct line or route between the competitive points." While this limitation does not apply in terms to relief granted because of market competition, the Commission has felt that in exercising its discretion under the law the same principle should be applied, believing that the same reasons for such a limitation exists in the one case as in the other. Id. (30).

The whole adjustment of rates in the Mississippi Valley has been before the Commission and all fourth section relief over direct lines between New Orleans, La., and points north thereof, both east and west of the Mississippi River has been denied. To now grant such relief with respect to rates on coffee would, therefore, be inconsistent with the policy which has been pursued with respect to other rates in the same territory and with the spirit and intent of the law. Id. (30).

Fourth section relief granted lines whose routes are not less than 15 per cent longer to a common destination than the direct route, with the limitation that the authority shall not include intermediate points as to which the haul of the line which is granted relief is not longer than that of said direct route to the common destination. Id. (32).

Carriers operating circuitous routes where the distances exceed the short-line distance by more than 15 per cent authorized to meet the rates of the direct routes at competitive points and maintain higher rates to intermediate points, provided the rates to the intermediate points do not exceed for like distances the rates over the direct routes to the competitive points and do not exceed the lowest combination. Lake Superior Paper Co. v. Director General, 33 (34-35).

LONG AND SHORT HAUL—Continued.

In General—Continued.

Following *Iten Biscuit Co.*, 50 I. C. C., 724, 53 I. C. C., 729, no award of reparation made due to unauthorized departure from the long and short haul provision of section 4 of the act, where shipper did not prove damage by reason of collection of higher rate to the intermediate point. *Anaconda Copper Mining Co. v. Director General*, as Agent, 136 (139).

Contention that the maintenance of a higher export rate to one point than the contemporaneous domestic rate to a farther distant point over the same line in the same direction, was in violation of the long-and-short-haul provision of the fourth section. *Held*: In ascertaining whether the provisions of this section have been contravened rates of the same character must be compared. *Wenger-Armstrong Petroleum Co. v. Director General*, as Agent, 175 (176).

Proposed revision of commodity rates, involving both increases and reductions, designed to eliminate deviations from the long-and-short-haul provision of the fourth section of the act, in the construction of rates primarily affecting Mississippi Valley points and Nashville, Tenn., found not justified in certain instances and justified in others. Maximum bases prescribed. Rates to, from, and between Points South of Ohio River, 306.

Proposed cancellation of interstate commodity rate on lumber from North Tonawanda to Canandaigua, N. Y., leaving in effect higher class rate which would contravene the long-and-short-haul provision of the fourth section of the act, found not justified. Lumber from North Tonawanda to Canandaigua, 530.

Proposal to make inapplicable the intermediate clause on lumber and lumber products from southeastern territory when destined to local points on the Norfolk & Western, which would result in higher combination rates and violations of the long-and-short-haul provision of section 4 of the act, found not justified. Lumber from Southeast to N. & W. Points, 591.

Carriers having indirect routes authorized to establish rates the same as those in effect over the direct lines from and to the same points and to maintain higher rates at intermediate points, provided that authority granted shall not extend to intermediate points via the circuitous line to which the haul is not longer than that of the direct line or route from and to the competitive points; and that the rates from the other intermediate points shall in no case exceed the lowest combination. *Chamber of Commerce of Johnson City, Tenn. v. S. Ry. Co.*, 709.

Beresford and Salem, S. Dak.: Authority to charge for the transportation of gasoline and petroleum products from Oklahoma and Kansas points to Sioux Falls, S. Dak., rates which are lower than the rates on like traffic to Beresford and Salem, and other intermediate points, denied. *Coad v. C., St. P., M. & O. Ry. Co.*, 178 (180).

Billings, Mont.: Maintenance of rates on newsprint paper from points in the Portland, Oreg., group to Denver, Colo., lower than to Billings and other intermediate points in contravention of the long-and-short-haul rule of section 4 of the act, found not justified. *Tribune v. B., A. & P. Ry. Co.*, 557 (560).

LONG AND SHORT HAUL—Continued.

Branford, Fla.: Application seeking authority to charge for the transportation of cotton seed from Fort White, Fla., to Cordele, Ga., lower rates than are maintained on like traffic from Branford and other intermediate points, denied. *Empire Cotton Oil Co. v. Director General*, as Agent, 64 (66).

Fort Gibson, Okla.: Authority to charge rates on sand from Fort Smith, South Fort Smith, and Van Buren, Ark., to Joplin, Webb City, and Springfield, Mo., lower than from Fort Gibson and other intermediate points, denied. *United Iron Works v. Director General*, as Agent. 601 (603-604).

Moss, Va.: Rate on bituminous coal from, to Toledo, Ohio, higher than from Dante, Va., a farther distant point to which Moss is directly intermediate, unprotected by appropriate application, found not unreasonable, but unlawful, and since departure has been removed by the establishment of a lower rate from Moss than from Dante, any undue prejudice that may have existed has been eliminated. Reparation denied. *Clinchfield Coal Corp. v. Director General*, as Agent, 143.

Rome, N. Y.: Rates on copper bars from Anaconda and Black Eagle, Mont., to, higher than to Utica, N. Y., a farther distant point, unprotected by appropriate application, found unlawful but not unreasonable or unduly prejudicial. *Anaconda Copper Mining Co. v. Director General*, as Agent, 136.

LOSS AND DAMAGE.

The amount of loss and damage claims normally accruing in the course of transportation is a factor which is properly taken into account in the fixation of the rates for transportation. Rates on Grain, Grain Products, and Hay, 85 (93).

The susceptibility of an article to damage in transit is an important factor which enters into its classification rating. *Indian Packing Corp. v. Director General*, as Agent, 205 (208).

LOW-GRADE COMMODITY.

Rates on sand, slag, and crushed stone from Joliet and Thornton, Ill., to the Chicago switching district and from and to points within the district found not unjustly discriminatory or unduly prejudicial to interstate transportation of sand and gravel to the district. *Chicago Sand & Gravel Producers v. Director General*, as Agent, 37.

Garbage, a waste product, is entitled to lower rates. *Reservoir Heights Stock Ranch v. Director General*, as Agent, 57 (58).

Proposed increased rates on scrap paper, rags, and old rope, in straight or mixed carloads, from certain points in northern Iowa and southeastern Minnesota to Chicago and Peoria, Ill., St. Louis, Mo., and points taking the same rates; also from Mason City, Iowa, to Mississippi crossings on traffic destined east of the Illinois-Indiana state line, designed to correct certain maladjustments and which are low in comparison with rates from other groups for similar hauls, found justified. *Scrap Paper between Western Points*, 607.

LOW RATES. *See also* SUBNORMAL RATES.

Competitive and other conditions have served to bring about very low switching charges at industrial centers. *Forsythe Leather Co. v. Director General*, as Agent, 17 (19).

LOW RATES—Continued.

Transportation charges constitute a large proportion of the finally delivered price of hay, much of which customarily moves considerable distances. The character, values, volume, and use of this commodity are such as to require relatively low charges for its carriage. Rates on Grain, Grain Products, and Hay, 85 (89).

LOWREY TARIFF.

Limits of the Chicago switching district determined under the Lowrey tariffs many years ago as the result of prolonged conference and negotiation between carriers and shippers should not be reconstructed by the Commission on the record in the instant case. *Illinois Brick Co. v. Director General*, as Agent, 273 (278).

The Commission has recognized the propriety of the action of various carriers reaching Chicago, Ill., in excepting certain commodities and classes of traffic from the provisions of the Lowrey tariff. *Id.* (280).

MARKET COMPETITION. *See* COMPETITION.

MARKETS.

While local conditions, feeding, etc., sometimes exert an influence, the farmer has little control over the price he receives for his crops. These are controlled by prices set at places where the surpluses of all countries meet, and this particularly applies to the Liverpool market control over wheat. With respect to coarse grains, and to a lesser extent hay, prices rest on such primary markets as Chicago, Minneapolis, Omaha, and Kansas City. Rates on Grain, Grain Products, and Hay, 85 (91).

MEASURE OF RATE.

The rail-and-lake rate on coffee from New York, N. Y., to Chicago, Ill., need not be made the measure of the rate from New Orleans, La., to Chicago, as in no case has the Commission required rail lines to meet water-and-rail rates. The rail-and-lake rates from New York are not used during the winter months and much of the traffic moves all-rail even when the water routes are open. Coffee from Galveston and other Gulf Ports, 26 (82).

A fair measure of the reasonableness of a joint rate which exceeds a combination between the same points over the same route is the lowest combination over the route of movement which would apply if the joint rates were canceled. *Empire Cotton Oil Co. v. Director General*, as Agent, 64.

The unreasonableness of a rate is not established by its subsequent reduction by the carrier. *Empire Cotton Oil Co. v. Director General*, as Agent, 71 (72).

While volume of tonnage is an important element in the determination of reasonable rates, it is only one of the many elements to be considered. Car loading, value, earnings, similarity of transportation conditions, and general transportation characteristics of the commodities are other items of importance. *Pillsbury Flour Mills Co. v. Director General*, as Agent, 81 (84).

The car-loading of a commodity is of importance in determining the rate, absolutely and relatively. Rates on Grain, Grain Products, and Hay, 85 (92).

Section 1 requires that no more than just and reasonable rates for transportation be exacted, and in determining what is just and reasonable it has always been recognized that, among other factors, not only the cost of the service, but its value to the user, must be considered. *Id.* (98).

MEASURE OF RATE—Continued.

The percentage of increase under general order No. 28 of the Director General is not controlling if the resulting rate is not unreasonable. *Bedford Pulp & Paper Co. v. Director General*, as Agent, 219 (220).

Unreasonableness is not established by the existence of a lower rate over a route other than the route of movement and the subsequent reduction of the rate over the route of movement. *Id.* (220).

The reasonableness of rates can not be determined by a construction of general order No. 28. *Silica Sand Producers Traffic Asso. v. C., B. & Q. R. R. Co.*, 302 (304).

In *Rates on Lumber and Lumber Products*, 52 I. C. C., 598, the Commission included box shooks among the lumber articles as to which carriers were advised that they should observe as maxima the rates on lumber. Contention that a presumption of reasonableness attaches to proposed rates on shooks because they are made equal to the lumber rates, not sustained, as expressions in the above report clearly indicated that it was the Commission's intention to require in connection with rates on articles increased to the lumber basis a prior consideration of the propriety of the lumber rates. *Box Shooks from Southeast to Eastern Points*, 389 (394).

Neither the voluntary reduction of a rate, nor the existence of a lower rate in the opposite direction is of itself a sufficient ground upon which to base a finding of unreasonableness. *Mississippi Valley Iron Co. v. C., B. & Q. R. R. Co.*, 441.

Class rates applying on sporadic shipments can not be condemned merely because commodity rates are maintained in the opposite direction in which there is a regular movement. *Pure Oil Co. v. Director General*, as Agent, 444 (445).

Allegation of unreasonableness due to the application by carriers of the increases under general order No. 28 of the Director General to each factor instead of but once to the through combinations, *Held*: Reasonableness of such rates can not be determined solely from the method of their construction. *Pioneer Lumber Co. v. Director General*, as Agent, 485 (486).

A proper rate relationship between competitive groups, particularly on such a commodity as coal, is in many respects of greater importance to the shipping public than the measure of the rate itself. *Coal from Detroit, Toledo & Ironton R. R. Mines*, 564 (566).

Where two commodities, now admittedly noncompetitive, have long ceased to bear any common or recognized relationship, and where the basic rates upon both show no appreciable difference in stability or duration, the presumption that the rates applicable to one of the two fixes a reasonable maximum standard for the other is not convincing. *Slater v. S. P. Co.*, 647 (652).

The Commission has frequently used 325 miles as a basis for determining just and reasonable rates between the Mississippi and Missouri rivers. *Railroad Commissioners of Iowa v. M. & St. L. R. R. Co.*, 673 (676).

A rate in one direction higher than in the opposite direction does not demonstrate the unreasonableness of such higher rate. *Raritan Copper Works v. Director General*, as Agent, 691 (692).

Manner in which rates are constructed is but one of the elements to be considered in reaching proper conclusions. *Madison Lumber & Mill Co. v. Director General*, as Agent, 699 (700).

MEASURE OF RATE—Continued.

Fact that carriers have accorded to one article a basis of rates, below normal is of itself no reason, in the absence of unjust discrimination or undue prejudice, for requiring the establishment of the same rates on analogous articles, especially where shipper is directly benefited by the lower basis of rates already in effect. *Pioneer Pole & Shaft Co. v. Director General*, as Agent, 744 (746).

MERGER. *See* CONSOLIDATION.

MILEAGE RATES. *See* DISTANCE RATES.

MILLING IN TRANSIT. *See* TRANSIT ARRANGEMENTS.

MINIMUM CHARGE.

Carrier published a tariff which was intended to substitute a minimum of 80,000 pounds for the minimum charge of \$15 per car established by the Director General under general order No. 28 on raw clay, but through inadvertance the tariff did not carry the necessary provision for application of such minimum. Subsequently tariff corrected and minimum established. *Held*: \$15 minimum charge unreasonable to extent it exceeded rate and minimum subsequently established. Reparation awarded. *Texarkana Pipe Works v. Director General as Agent*, 6.

Minimum charge of \$15 per car assessed for the factor of a combination rate beyond L. & N. bridge, Cincinnati, Ohio, on empty glass bottles moving from Carrel street station, Cincinnati, to Newport and Latonia, Ky., found unreasonable to extent it exceeded minimum of \$6.50, maximum \$10 per car, subsequently established. Reparation awarded. *Boldt Glass Co. v. Director General*, as Agent, 619.

MINIMUM CLASS SCALE.

Minimum class-E rate, established June 25, 1918, pursuant to general order No. 28 of the Director General, and assessed on intrastate shipments of garbage from Minneapolis, Minn., to Spur No. 8, Minn., during federal control, found unreasonable to extent it exceeded the rate applicable prior to June 25, 1918, plus a 25 per cent increase. Reparation awarded. *Reservoir Heights Stock Ranch v. Director General*, as Agent, 57.

Both factors of combination rate on coal from Kenilworth, Utah, to Hillyard, Wash., increased under general order No. 28 of the Director General, the factor Spokane, Wash., to Hillyard being increased by application of the minimum class scale. Competitors on an industrial track in Spokane were charged the Spokane rate plus a switching charge. *Held*: While factor Spokane to Hillyard appears unreasonable, the through rate resulting from its use is not shown unreasonable but found unduly prejudicial to extent it exceeds the rate to Spokane by more than amounts herein prescribed. Reparation denied. *Edwards & Bradford Lumber Co. v. Director General*, as Agent, 503.

MINIMUM WEIGHT. *See also* WEIGHT.

In General:

Proposed increased minimum weight for switching interstate shipments between team tracks of the Chicago & Eastern Illinois and junctions with connecting lines at Chicago, Ill., when from or to points beyond the Chicago switching district, found justified, as there is no evidence tending to show that respondent should be required to maintain a lower minimum than is applied generally by other trunk lines in the same district for a like kind of service. Switching at C. & E. I. Team Tracks, 500.

MINIMUM WEIGHT—Continued.

In General—Continued.

Contention that phrase in tariff "highest rate and minimum weight" means the highest rate and highest minimum weight, sustained.

Minimum Weight on Live Stock in Mixed Carloads, 546.

Egg-box stuff and egg-case fillers: Proposed increased c.l. minimum on, from Missouri River points to interstate destinations in Kansas, from 24,000 to 30,000 pounds, which will establish throughout this territory a uniform description on these articles, found justified. Proposed minimum is satisfactory to the majority of shippers and can be loaded into a standard 36-foot car. Minimum Weight on Egg-Box Stuff and Egg-Case Fillers, 51.

Live stock: Proposal of carriers to make the tariff rule providing the basis of charges on shipments of live stock in mixed carloads read "the highest rate and highest minimum weight" instead of "the highest rate and minimum weight," held to be justified as such change effectuates the Commission's tariff regulations concerning definiteness and certainty in the publication of rates. Minimum Weight on Live Stock in Mixed Carloads, 546.

Rock, crushed gypsum: Upon complaint assailing the minima applicable on, as unreasonable to extent they exceeded actual weights, *Held*: Evidence adduced affords no basis for determining whether tariff minima can be loaded, and upon record made the c.l. minima assailed are not unreasonable. *Acme Cement Plaster Co. v. St. L.-S. F. Ry. Co.*, 662.

Tractors, garden: Proposed increased c.l. minimum on, in official, western, and southern classification territories, found justified. More tractors made by protestant are sold in carloads than in less-than-carloads, and record shows that all other garden tractors load up to and in excess of the proposed minimum. Carload Minimum Weight on Garden Tractors, 1.

MISDELIVERY. See DELIVERY.

MISQUOTATION OF RATE.

Had shipper left routing open or observed tariff restrictions several routes over which lower rate applied could have been used but since he routed shipments via higher rated route through error of agent, that fact of itself does not entitle him to reparation. Every shipper is charged with notice of the terms of interstate tariffs governing his shipments; and mere showing of the existence of lower rates over other routes and comparisons based upon distance alone, are insufficient to establish the unreasonableness of the rate charged. *South Chester Tube Co. v. M., K. & T. Ry. Co.*, 78.

MISROUTING.

Where shipments were specifically routed by shipper, and lower rate in effect via another route consistent with routing instructions, shipments found misrouted and reparation awarded. *West Kentucky Coal Co. v. Director General*, as Agent, 151.

Due to abnormal ice conditions in Norfolk harbor, the customary route and via which shipments were specifically routed, carrier diverted via routes taking higher rates. *Held* Such shipment as were diverted without shipper's authorization, found misrouted. Reparation awarded. *Du Pont de Nemours & Co. v. Director General*, as Agent, 170.

Shipment tendered unrouted. Lower rate in effect via route other than route of movement. *Held*: As it was carrier's duty to forward shipment via the cheapest available route, shipment found misrouted. Reparation awarded. *Kentucky Wholesale Co. (Inc.) v. Director General*, as Agent, 193.

MISROUTING—Continued.

Shipments found misrouted where embargoes were a disability of the carriers, which did not confer upon them the right of diverting shipments to higher rated routes contrary to shippers' instructions, especially where there were no provisions in tariffs at time shipments moved prohibiting reconsignment to embargoed points, and nothing which would have precluded shipper from specifically routing via lower rated routes had it billed shipments to final destinations in the first instance. *McGowin Lumber & Export Co. v. Director General, as Agent, 694 (697).*

MISTAKE. See **ERROR.**

MIXED CARLOADS.

Steel crown blocks are manufactured specially as integral parts of oil-drilling outfits, and are not adapted to other uses. If they are parts of oil-well outfits when shipped l. c. l., their movement in carloads does not alter their character. There is no dissimilarity in the transportation characteristics which warrant application of a higher basis of rates when they move in straight carloads than when shipped in mixed carloads with other oil-well supplies. *Id. (155).*

The general rule of the classification committee is to provide specific ratings based on classification characteristics of articles and not upon their mixing possibilities. Classification Rating on Paper Shopping Bags, 423 (425-426).

Proposal of carriers to make the tariff rule providing the basis of charges on shipments of live stock in mixed carloads read "the highest rate and highest minimum weight" instead of "the highest rate and minimum weight," held to be justified as such change effectuates the Commission's tariff regulations concerning definiteness and certainty in the publication of rates. Minimum Weight on Live Stock in Mixed Carloads, 546.

Rates on wooden bull-wheel arms, cants, and pins from Parkersburg, W. Va., to points in Kansas, Oklahoma, Texas, and Louisiana, found unreasonable and unduly prejudicial to extent they exceed the rates on lumber. Relationship of rates prescribed and reparation awarded. *Parkersburg Rig & Reel Co. v. Director General, as Agent, 563.*

MOTOR VEHICLES.

Upon further hearing, certain carriers authorized to reduce rates on gasoline from Somerset to San Antonio, Tex., and on gasoline and fuel oil from Grand Prairie to Dallas, Tex., to a basis lower than prescribed in the *Shreveport Case*, 48 I. C. C., 312, in order to meet motor truck competition and keep the traffic to their rails. Railroad Commission of Louisiana v. A. H. T. Ry. Co., 197.

NOTICE.

Every shipper is charged with notice of the terms of interstate tariffs governing his shipments. *South Chester Tube Co. v. M., K. & T. Ry. Co., 78 (80).*

Demurrage charges accruing on cars of sand which arrived, in frozen condition, thus causing delay in unloading and resulting in subsequent shipments being constructively placed on tracks in the vicinity of complainant's plant or in railroad yards, found not unreasonable or otherwise unlawful as complainant failed to comply with tariff requirement which provided for the service upon carrier's agent of written notice or statement that lading was frozen when tendered. *Hamilton Foundry & Machine Co. v. Director General, as Agent, 439.*

NOTICE—Continued.

Demurrage and storage charges accruing on unclaimed order notify shipment due to refusal of carrier to comply with shipper's instructions to place in public warehouse, without surrender of bill of lading and payment of accrued charges, found not unreasonable or unlawful as there was no specific tariff provision requiring carrier to place shipment in public storage and carrier was legally bound to collect such charges in accordance with the applicable tariff rules and regulations. *Vim Motor Truck Co. v. Director General, as Agent*, 588.

OPERATING CONDITIONS.

Due to light passenger travel and difficult and expensive operating conditions, passenger fares between points in Arizona and points in Nevada, between points in Arizona and points in New Mexico, between points in New Mexico and points in Nevada, and between points in Arizona, Nevada, and New Mexico and points in other states, found not unreasonable, unjustly discriminatory, or unduly prejudicial. *Arizona Corporation Commission v. A. E. R. R. Co.*, 253.

Based upon operating conditions and cost of service rates on sheep in double-deck cars from certain points in Idaho, Oregon, Nevada, and California, to San Francisco, Calif., and bay points, which are higher than the rate on fat cattle per car, found not unreasonable, but basis of readjustment suggested. *Slater v. S. P. Co.*, 647.

OPERATING EXPENSES.

Viewed as an administrative matter, the question of what rules and regulations are or will be reasonable in connection with transportation covered by a bill of lading, depends principally upon the adjustment of the carrier's compensation to the degree of risk, reflected in operating expenses, which it incurs. The fair return as contemplated in section 15a of the act must also be borne in mind. *Export Bill of Lading*, 347 (354).

OPPOSITE DIRECTION. See BOTH DIRECTIONS.

ORDER NOTIFY.

Demurrage and storage charges accruing on unclaimed order notify shipment due to refusal of carrier to comply with shipper's instructions to place in public warehouse, without surrender of bill of lading and payment of accrued charges, found not unreasonable or unlawful as there was no specific tariff provision requiring carrier to place shipment in public storage and carrier was legally bound to collect such charges in accordance with the applicable tariff rules and regulations. *Vim Motor Truck Co. v. Director General, as Agent*, 588.

ORDINANCE.

Intrastate passenger fares of the Steubenville, East Liverpool & Beaver Valley Traction Co., an interurban electric line, required by ordinance or franchise contracts to be maintained between points in Ohio, and which are lower than the corresponding interstate fares between points in Pennsylvania and points in Ohio, found unduly preferential of intrastate passengers, unduly prejudicial to interstate passengers, and unjustly discriminatory against interstate commerce. *Ohio and Pennsylvania Rates, Fares and Charges*, 517.

While it may be argued under *Omaha Street Railway Case*, 230 U. S., 324, that the Commission has no jurisdiction over a city street-car line, it can not be seriously contended that the federal government in its efforts to

ORDINANCE—Continued.

prevent discrimination is to be prevented by municipalities which, in franchises involving the use of their local streets, assume to regulate the rates to and between other cities; and particularly when such franchises impose rates which are unjust and menace the maintenance of interstate transportation facilities and service. *Id.* (524).

OUTBOUND RATES. See INBOUND AND OUTBOUND.**OUT-OF-LINE HAUL. See also CIRCUITOUS ROUTE.**

Point formerly reached by a narrow gauge line over which an out-of-line charge was established. Before shipments moved line made standard-gauge and became part of the main line thus rendering the out-of-line haul unnecessary, but charge for the extra service was not eliminated from tariff until after shipments moved. Charges assessed for unperformed out-of-line movement found illegal. Reparation awarded. *Grayson Owen Co. v. Director General, as Agent*, 157.

ORDERS OF COMMISSION.

Where defendant named in complaint is no longer an operating company and its successor is not a party to the proceeding, no order for the future entered, but if findings are not complied with complainant's may again call the matter to the Commission's attention for such further action as may be deemed appropriate. *City of New Albany v. L. & N. Ry. & L. Co.*, 468 (476).

OVERCHARGES.

Combination rate on pig lead from Granby, Mo., to Seattle, Wash., for export, exceeded lower combination applicable under Rule 5(b) of Tariff Circular 18-A. Refund of overcharges directed. *Mitsui & Co. v. Director General, as Agent*, 4.

Following *Sligo Iron Store Co.*, 62 I. C. C., 643, where one of the tariffs used in making combination rates on through shipments contained a rule that such rates will be subject to the increase authorized under general order No. 28 but once and tariffs of the other carriers participating in the movement did not publish the clause or refer to any other tariff publishing such a rule, there is a holding out to the shipper of the rate so constructed which carriers should protect. Shipments found overcharged and reparation awarded. *Madison Lumber & Mill Co. v. Director General, as Agent*, 699 (701).

OWN WHEELS. See CARS MOVING ON OWN WHEELS.**PACKING. See also CONTAINERS.**

Failure of carriers to provide for the shipment of machine-finished steel roller chains, in bags, at the same ratings when shipped in barrels or boxes, found unreasonable. *Link-Belt Co. v. P., C., C. & St. L. R. R. Co.*, 195.

Official classification rating of second class on sliced dried beef, in glass, 1. c. l., found unreasonable as compared with rating on the same commodity in metal cans or in bulk, in barrels or boxes. Rating of third-class prescribed and reparation awarded. *Indian Packing Corp. v. Director General, as Agent*, 205.

The liability of an inner container to breakage depends chiefly on the method of packing and the character of the outer container, which the carrier may control. When shipments are properly packed in an outer container of the right character, the character of the inner container may become relatively unimportant. *Id.* (208).

PACKING—Continued.

Proposed changes in packing requirements, estimated weights, and weighing of eastbound transcontinental shipments of deciduous fresh fruits, which provide that if shipments are made in packages not conforming to the "standard railroad container," charges will be computed on basis of "actual" weight, determined by weighing at least five packages from each lot of the different kinds of fruit in other than standard packages, found not justified as some species of a particular kind weigh more than others and irregular packages of heavier fruit would thus be subjected to a higher charge because of excess over estimated weight specified in the tariff. *Packing Requirements of Deciduous Fresh Fruits*, 539.

PARITY OF RATES.

Prior to federal control San Francisco, Calif., and Seattle, Wash., were on a rate parity as to export traffic but due to the cancellation of all export rates by the Director General this adjustment disrupted. Rate applicable on pig lead moving from Granby, Mo., to Seattle, for export, found not unreasonable, discriminatory, or unduly prejudicial as compared with lower rate to San Francisco, or with rate established subsequent to movement when Seattle and San Francisco were again placed on a rate parity. *Mitsui & Co. v. Director General*, as Agent, 4.

PARTIES.

Reparation awarded to complainant, a stranger to the transportation transaction, who was in reality the consignee and who bore the transportation charges. *Citizens Gas Co. v. Director General*, as Agent, 457 (460).

Where defendant named in complaint is no longer an operating company and its successor is not a party to the proceeding, no order for the future entered. If findings are not complied with complainants authorized to again call the matter to the Commission's attention for such further action as may be deemed appropriate. *City of New Albany v. L. & N. Ry. & L. Co.*, 468 (476).

Whether consignor was legally obliged to reimburse consignee for unreasonable freight charges, or was actuated solely by considerations of commercial policy is immaterial where consignor was a party to the transportation record and it is not disputed that it actually bore the burden of the unreasonable freight charges. Consignor is the only person to whom reparation could legally be awarded. *Pure Oil Co. v. Director General*, as Agent, 688 (690).

PARTS.

Steel crown blocks are manufactured specially as integral parts of oil-drilling outfits, and are not adapted to other uses. If they are parts of oil-well outfits when shipped l. c. l., their movement in carloads does not alter their character. *Parkersburg Rig & Reel Co. v. Director General*, as Agent, 154 (155).

PASSENGER FARES.

Due to light travel and difficult and expensive operating conditions, passenger fares between points in Arizona and points in Nevada, between points in Arizona and points in New Mexico, between points in New Mexico and points in Nevada, and between points in Arizona, Nevada, and New Mexico and points in other states, found not unreasonable, unjustly discriminatory, or unduly prejudicial. *Arizona Corporation Commission v. A. E. R. R. Co.*, 253.

PASSENGER FARES—Continued.

Passenger fare of 10 cents for all passengers, maintained by the Louisville & Northern Ry. & Lighting Co., an electric line, between Louisville, Ky., and New Albany, Ind., found unreasonable to extent it exceeds 10 cents per passenger for a single trip and a commutation fare of 9 cents per passenger upon the purchase of not exceeding 12 tickets. *City of New Albany v. L. & N. Ry. & L. Co.*, 468.

Intrastate passenger fares of the Pennsylvania-Ohio Power & Light Co., an electric line, required by franchise contract to be maintained between Hubbard and Youngstown, Ohio, and which are lower than the corresponding interstate fares between Sharon, Pa., and Hubbard, and between Sharon and Youngstown, found unduly preferential of intrastate passengers, unduly prejudicial to interstate passengers, and unjustly discriminatory against interstate commerce. *Ohio Rates, Fares, and Charges*, 493.

If the maintenance of intrastate passenger fares fixed by a franchise contract results in unjust discrimination against interstate commerce, it is within the Commission's power to remove it by prescribing other and different intrastate fares. *Id.* (498).

Intrastate passenger fares of the Steubenville, East Liverpool & Beaver Valley Traction Co., an interurban electric line, required by ordinance or franchise contracts to be maintained between points in Ohio, and which are lower than the corresponding interstate fares between points in Pennsylvania and points in Ohio, found unduly preferential of intrastate passengers, unduly prejudicial to interstate passengers, and unjustly discriminatory against interstate commerce. *Ohio and Pennsylvania Rates, Fares, and Charges*, 517.

PAST RATES.

Rates on glycerin, in iron drums, from Kansas City, Mo., to Fayville, Ill., moving via two lines found unreasonable to extent they exceeded rate involving a single line haul direct, which lower rate had previously been in effect via routes of movement but was cancelled because of a dispute over divisions. Reparation awarded. *Aetna Explosives Co. (Inc.) v. C. & E. I. R. R. Co.*, 635.

PERCENTAGE RATES.

The mere showing of the fact that in making effective the increases provided in general order No. 28 of the Director General, a slight disturbance was created in the percentage relationship which a specific rate bore to other rates between the same points, and the subsequent voluntary restoration of that relationship, does not warrant a condemnation of the rate in effect during the interim. *Ault & Wiborg Co. v. Director General, as Agent*, 443.

Upon further hearing and following *Interior Iowa Cases*, 28 I. C. C., 64; 29 I. C. C., 536; and 46 I. C. C., 39, combination through rates on walnut dimension lumber from Des Moines, Iowa, to points east of the Indiana-Illinois state line, or for export, found unreasonable and unduly prejudicial to extent that the proportional commodity rates from Des Moines to upper Mississippi River east-bank crossings exceed 57 per cent of the corresponding proportional commodity rates from the Missouri River cities to Mississippi River crossings. Original report, 53 I. C. C., 484. *Railroad Commissioners of Iowa v. M. & St. L. R. R. Co.*, 673.

PERISHABLE FREIGHT.

Proposed rule eliminating the state of Illinois, and that portion of Indiana lying within the Chicago switching district, from the territory in which carriers' protective service against cold is now available, and withdrawing such service on traffic originating outside the so-called cold-weather zone, found not justified as the extension and development of protective service against cold, originally proposed and strongly urged by the Commission in *Perishable Freight Investigation*, 56 I. C. C., 449, would be extremely unlikely. Heater Service for Fresh Fruits and Vegetables, 283.

The value of protective service against cold to the shipper in insuring against loss and damage, to the carrier in stimulating traffic, and to the nation in conserving the food supply, makes it imperative that no individual railroad be permitted to hinder its further development. Id. (288).

PLACEMENT. See SPOTTING CARS.

PLEADING AND PRACTICE.

Where defendant named in complaint is no longer an operating company and its successor is not a party to the proceeding, no order for the future entered. If findings are not complied with complainant authorized to again call the matter to the Commission's attention for such further action as may be deemed appropriate. *City of New Albany v. L. & N. Ry. & L. Co.*, 468 (476).

PONY REFRIGERATORS.

Proposal of the American Railway Express Co. to increase the estimated weights on berries in pony refrigerators, from points in Florida to destinations throughout the United States, found not justified as the practical and only effect of the proposed increases would be a substantial increase in transportation charges and respondent has not shown that the application of the existing rates to such estimated weights will not result in unreasonable charges to the shipper. *Weights on Berries in Pony Refrigerators*, 610.

POWER OF COMMISSION. See JURISDICTION.

PRACTICE. See PLEADING AND PRACTICE.

PREFERENCES AND PREJUDICES.

In General:

Undue prejudice wholly in respect of intrastate traffic is not within the Commission's jurisdiction, the remedy lying with the state authorities. *Railroad Commission of Louisiana v. A. H. T. Ry. Co.*, 248 (250).

It would be difficult, if not impossible, to prevent the unjust discrimination and undue prejudice forbidden by the act if carriers could vary the terms of the contract of transportation at will in dealing with different shippers of the same commodity. *Export Bill of Lading*, 347 (352).

The inhibition of section 3 of the act against undue prejudice applies to localities as well as to shippers at those localities. *Pioneer Lumber Co. v. Director General*, as Agent, 485 (489).

The interstate commerce act is not only designed to cure violations thereof, but also to prevent them. Undue prejudice and preference may be brought about as readily by reducing one of two related rates as by increasing the other rate. *Coal from Detroit, Toledo & Ironton R. R. Mines*, 564 (566).

PREFERENCES AND PREJUDICES—Continued.

In General—Continued.

There can be no question of undue prejudice to a specific point where the carrier serving that point is in no way responsible for lower rates accorded competitors who ship from other points to the same destinations. *Equity Co-Operative Packing Co. v. Director General*, as Agent, 615 (616).

In order to constitute undue prejudice under section 3 a competitive relation between the persons, localities or descriptions of traffic concerned must generally appear. *Pioneer Pole & Shaft Co. v. Director General*, as Agent, 744 (746).

Articles:

Arms, cants and pins, wooden bull wheel: Rates on, found unreasonable and unduly prejudicial to extent they exceed the rates on lumber. Relationship of rates prescribed and reparation awarded. *Parkersburg Rig & Reel Co. v. Director General*, as Agent, 568.

Flitches and planks, hickory: Rates on, found not unreasonable or unduly prejudicial as compared with subnormal rough material rates applied on billets, with which no competitive relationship is shown to exist. Such low rates were established to encourage development of the country along carriers' lines and covered cost of service only. *Pioneer Pole & Shaft Co. v. Director General*, as Agent, 744.

Car Distribution:

Practice of carrier in distributing cars on basis of actual amount of grain on hand in elevator and ready for shipment, and refusing to take into consideration grain in the country adjacent to complainant's elevator, found not to result in unjust discrimination. *Farmers Grain Co. v. C., R. I. & P. Ry. Co.*, 730.

Practice of carriers distributing empty cars among lumber shippers in refusing to apportion available cars upon basis of ability of shippers to promptly load, as determined by production and accumulated stock on hand, and apportioning such cars upon basis of past performance during periods of normal car supply, found not to have resulted in undue prejudice or discrimination. *Wausau Southern Lumber Co. v. G. & S. I. R. R. Co.*, 732.

Localities:

Attica, Ind.: Proposed reduction in interstate rates on brick and articles taking same rates from Danville, Ill., to certain points in Indiana in the Chicago, Ill., group, in order that the Wabash R. R., which forms a circuitous route, may compete for traffic moving via direct lines found not justified, as the establishment thereof would result in undue prejudice to Attica. *Brick from Danville*, 624.

Boston, Mass.: Defendants' failure to accord transit at Boston, on wool and mohair originating west of the Hudson River, while according such transit at Chicago, Ill., and other western points, found not to result in undue prejudice, and fact that dealers at those points have transit has not affected the supremacy of Boston as a wool market. *Boston Wool Trade Asso. v. A. & S. Ry. Co.*, 365 (388).

Cabin Creek Junction, W. Va.: Combination rate on petroleum refined oil, in tank-car loads, from, to Bowling Green, Ky., both factors of which were increased 4.5 cents under general order No. 28 of the

PREFERENCES AND PREJUDICES—Continued.

Localities—Continued.

Director General found unreasonable to extent it exceeded the through rate plus a single flat increase, subsequently established, and unduly prejudicial as compared with the rate from Falling Rock, W. Va., a farther distant competing point from which but a single increase to the through rate was applied. Reparation awarded. *Pure Oil Co. v. Director General, as Agent, 688.*

Cincinnati, Ohio: Rates on liquid asphalt, in tank-car loads, from Louisiana refining points, to, found not unreasonable or unduly prejudicial as compared with rates to Chicago, Vandalia, Marseilles, East St. Louis, Ill., and St. Louis, Mo. *Carey Mfg. Co. v. Director General, as Agent.*

Detroit, Toledo & Ironton R. R. mines: Proposed reduction by the D., T. & I. R. R. in the interstate rates on coal from mines on its line in Jackson county and Ironton groups in Ohio to Toledo, Ohio, Detroit, Mich., and other destinations, found not justified. If such reductions are permitted to become effective undue preference of such mines and undue prejudice to mines on other lines in the same and other groups in Ohio and other states would result. Coal from Detroit, Toledo & Ironton R. R. Mines, 564.

Douglas, Ariz.:

Class and commodity rates from points in California to, found unduly prejudicial to extent they exceed corresponding rates from the same points of origin to Bisbee, Ariz., and to certain cross-country points on the Southern Pacific in Arizona and New Mexico. *Douglas Chamber of Commerce v. A., T. & S. F. Ry. Co., 405.*

Commodity rates from points in Oregon and Washington and points basing thereon, to, applicable via California junctions, found unduly prejudicial to extent that they exceed corresponding rates via the same junctions from the same points of origin to El Paso, Tex., and Bisbee, Ariz. *Id. (405).*

Hillyard, Wash.: Both factors of combination rate on coal from Kenilworth, Utah, to, increased under general order No. 28 of the Director General, the factor Spokane, Wash., to Hillyard being increased by application of the minimum class scale. Competitors on an industrial track in Spokane were charged the Spokane rate plus a switching charge. *Held:* While factor Spokane to Hillyard appears unreasonable, the through rate resulting from its use is not shown unreasonable but found unduly prejudicial to extent it exceeds the rate to Spokane by more than amounts herein prescribed. Reparation denied. *Edwards & Bradford Lumber Co. v. Director General, as Agent, 503.*

Illinois points: Rates on common brick from points outside the Chicago switching district to points within said district found not unreasonable but unduly prejudicial to extent they exceed the rates from points inside of that district to interstate destinations therein by more than 10 cents per net ton. Nonprejudicial basis of rates prescribed and reparation denied. *Illinois Brick Co. v. Director General, as Agent, 273.*

PREFERENCES AND PREJUDICES—Continued.

Localities—Continued.

Indianapolis, Ind.: Basis of charges applicable on grain originating on the Lake Erie & Western, milled or accorded other transit services at Indianapolis, and reshipped to various destinations, and failure of tariffs to accord transit at Indianapolis in connection with the movement from and to certain of these points, found not unreasonable or discriminatory, but to extent that rates applicable via Indianapolis exceed those applicable via Noblesville, Ind., and to extent that transit is provided at Noblesville, in connection with the through rates which are not provided in connection with such rates at Indianapolis, found unduly prejudicial. *Indianapolis Board of Trade v. B. & O. R. R. Co.*, 416.

Johnson City, Tenn.: Upon further hearing, former reports 46 I. C. C., 527, and 50 I. C. C., 605, original finding to the effect that under the existing rate adjustment there is undue prejudice to Johnson City, and undue preference of Bristol, Va.-Tenn., reaffirmed. Reasonable maximum bases prescribed. *Chamber of Commerce of Johnson City, Tenn., v. S. Ry. Co.*, 709.

Kentucky mines: Following *Ohio Valley Case*, 53 I. C. C., 148, and *Illinois Coal Cases, 1920*, 62 I. C. C., 741, rates on bituminous coal from mines in western Kentucky to points in the southern peninsula of Michigan found not unreasonable, but to extent they exceed, on a joint basis, by more than 25 cents per ton the rates from mines in the southern Illinois group to the same destinations, found unduly prejudicial. Relationship of rates prescribed. *West Kentucky Coal Bureau v. I. C. R. R. Co.*, 577.

Montana points: Rates on newsprint paper from points in Oregon and Washington to destinations in Montana, found not unreasonable or unduly prejudicial as compared with relatively lower rates to Salt Lake City and Ogden, Utah, and Denver, Colo., which lower rates were fixed not by defendants but by another carrier. *Tribune v. A. & P. Ry. Co.*, 557.

Omaha, Nebr.: Rates on white-clover seed from Gilby, Grand Forks, and Michigan, N. Dak., to, found not unreasonable or unduly prejudicial as compared with lower rates from same points of origin to St. Louis, Mo., and Chicago, Ill., farther distant competing points. *Nebraska Seed Co. v. Director General*, as Agent, 75.

Phoenix, Yuma, and Hassayampa, Ariz.: Rates on cement from certain California points to, found unreasonable and unduly prejudicial to extent they exceed the rates herein prescribed. Reparation denied. *Arizona Corp. Commission v. A. E. R. R. Co.*, 758.

Ucross and Buffalo, Wyo.: Failure of carriers to extend the blanket rates to, located on the line of the Wyoming Ry., on lumber and lumber products moving from points in Idaho, Montana, and Washington, while maintaining such blanket rates to other more distant points in the blanket territory on carrier's main and branch lines or on independent connecting lines, found to result in undue prejudice. Reparation denied and nonprejudicial rates prescribed. *Pioneer Lumber Co. v. Director General*, as Agent, 485.

PREFERENCES AND PREJUDICES—Continued.

Localities—Continued.

Wauwatosa, Wis.: Rate on glue stock from, located in the Milwaukee switching district, to Carrollville, Wis., during federal control, found not unreasonable, but found unduly prejudicial to extent it exceeded rate from other districts in the Milwaukee switching district, which rate was subsequently established from Wauwatosa. Reparation denied. *Forsythe Leather Co. v. Director General*, as Agent, 17.

Spotting Cars: Defendants' denial to complainant of an allowance for spotting cars within its plant at Johnstown, Pa., equal to the cost of such service, not shown to have subjected complainant to the payment of unreasonable rates, or to undue prejudice as compared with services and allowances accorded competitors at various points. *Cambria Steel Co. v. Director General*, 737.

State and Interstate:

Rates on sand and gravel from Illinois points in the outer zone to the Chicago switching district found unduly prejudicial to the interstate transportation of sand and gravel from Wisconsin points to the Chicago district. Nonprejudicial basis of rates prescribed and reparation denied. *Chicago Sand & Gravel Producers v. Director General*, as Agent, 37 (49).

Upon further hearing, order for removal of undue prejudice and unjust discrimination entered in original report, 59 I. C. C., 290, modified by striking therefrom the name of the Fonda, Johnstown & Gloversville R. R. Co., which carrier does not "participate in the transportation" as that term is used in the order. Rates, Fares, and Charges of the N. Y. C. R. R. Co., 55.

Certain intrastate rates required by state authority to be maintained within the state of Missouri, lower than the corresponding interstate rates authorized in *Increased Rates*, 1920, 58 I. C. C., 220, found unduly prejudicial to interstate shippers, unduly preferential of intrastate shippers, and unjustly discriminatory against interstate commerce. *Missouri Rates and Charges*, 233.

On further hearing, intrastate rates on sand and gravel from Hart Spur to Fort Worth, Texas., excepted from findings in former report, 48 I. C. C., 312, as such rates would or could not result in any undue prejudice to Shreveport, La., and since the undue prejudice complained of is wholly in respect of intrastate traffic to Fort Worth from Hart Spur and Bonner Spur, respectively, the Commission is without jurisdiction, the remedy lying with the state authority. *Railroad Commission of Louisiana v. A. H. T. Ry. Co.*, 248.

Intrastate passenger fares of the Pennsylvania-Ohio Power & Light Co., an interurban electric line, required by franchise contract to be maintained between Hubbard and Youngstown, Ohio, and which are lower than the corresponding interstate fares between Sharon, Pa., and Hubbard, and between Sharon and Youngstown, found unduly preferential of intrastate passengers, unduly prejudicial to interstate passengers, and unjustly discriminatory against interstate commerce. *Ohio Rates, Fares, and Charges*, 493.

PREFERENCES AND PREJUDICES—Continued.

State and Interstate—Continued.

Intrastate passenger fares of the Steubenville, East Liverpool & Beaver Valley Traction Co., an interurban electric line required by ordinance or franchise contracts to be maintained between points in Ohio, and which are lower than the corresponding interstate fares between points in Pennsylvania and points in Ohio, found unduly preferential of intrastate passengers, unduly prejudicial to interstate passengers, and unjustly discriminatory against interstate commerce. *Ohio and Pennsylvania Rates, Fares, and Charges*, 517.

Policy of state commission in removing undue prejudice against interstate commerce to select lowest interstate rate that can be readily found and which may move some traffic and measure it with the entire body of intrastate rates, if carried to its logical conclusion, would be so destructive of existing rate structures and of sound and well-established principles and methods of rate-making that to state it is to condemn it. *Kansas Rates, Fares, and Charges*, 679 (681).

PRICE.

While local conditions, feeding, etc., sometimes exert an influence, the farmer has little control over the price he receives for his crops. These are controlled by prices set at places where the surpluses of all countries meet, and this particularly applies to the Liverpool market control over wheat. With respect of coarse grains, and to a lesser extent hay, prices rest on such primary markets as Chicago, Minneapolis, Omaha, and Kansas City. *Rates on Grain, Grain Products, and Hay*, 85 (91).

PRIMARY MARKETS.

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PRIVATE CARS.

A lower rate is justified on shipments moving in equipment furnished by shippers than would be reasonable for shipments moving in carriers' equipment. *Missouri Portland Cement Co. v. Director General*, as Agent, 243 (246).

PROOF. See also BURDEN OF PROOF.

Following *Iten Biscuit Co.*, 50 I. C. C., 724, 53 I. C. C., 729, no award of reparation made due to an unauthorized departure from the long-and-short-haul provision of section 4 of the act, where shipper did not prove damage by reason of collection of higher rate to the intermediate point. *Anaconda Copper Mining Co. v. Director General*, as Agent, 136 (139).

Defendant conceded that rates complained of were unreasonable, but contended that since complainant has not proven damage no reparation should be awarded. *Held*: Contention is precluded by decision in *Darnell-Taenzer Case*, 245 U. S., 531. *See Prestre Miller Stock Farms (Inc.) v. E. R. R. Co.*, 149.

PROOF—Continued.

Complainant, in complying with Rule V of the Commission's Rules of Practice, authorized to include in reparation statement details of shipments made subsequent to hearing accompanied by proof in the form of an affidavit that it made the shipments and paid and bore the freight charges thereon, with understanding that if carriers object to proof in affidavit form they may request further hearing with respect to reparation. *Indian Packing Corp. v. Director General*, as Agent, 205 (210).

Where witness had no personal knowledge as to whether complainant paid and bore the freight charges, reparation denied for exaction of an unreasonable and unlawful rate for want of proof. *Tacoma Junk Co. v. N. P. Ry. Co.*, 305.

Evidence presented found entirely inadequate to warrant a reversal of the conclusions reached in the *Wool Investigation*, 23 I. C. C., 151, and proportional commodity rates based upon findings reached in that case, on wool-in-the-grease from Mississippi River crossings to Boston, Mass., not shown to be unreasonable. *Boston Wool Trade Asso. v. A. & S. Ry. Co.*, 365 (380).

Affidavits offered in evidence by certain complainants to a proceeding to show that they made shipments and paid and bore the charges thereon where objected to by defendants upon ground that they were not accorded the right of cross-examination. *Held*: As to such complainants reparation denied. *Stewart-Warner Speedometer Corp. v. Director General*, as Agent, 541 (544); *United Iron Works v. Director General*, as Agent, 601 (604).

Upon complaint assailing the minima applicable on crushed gypsum rock as unreasonable to extent they exceeded actual weights, *Held*: Evidence adduced affords no basis for determining whether tariff minima can be loaded, and upon record made the c. l. minima assailed are not unreasonable. *Acme Cement Plaster Co. v. St. L.-S. F. Ry. Co.*, 662.

PROPORTIONAL RATES. *See also* FACTOR.

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Proportional commodity rate from Duluth, Minn., to Boston, Mass., lake-and-rail, on wool and mohair in the grease, in bags, sacks, and machine-pressed bales, found unreasonable for the future and reasonable maximum rates prescribed. *Id.* (380).

Proportional commodity rates to Boston, Mass., from Texas points, all rail, on wool and mohair in the grease, in bags, sacks, and machine-pressed bales, found unreasonable and reasonable basis of maximum rates prescribed. Corresponding rail-water-and-rail rates not shown to be unreasonable. *Id.* (381-382).

Upon further hearing and following *Interior Iowa Cases*, 28 I. C. C., 64; 29 I. C. C., 536; and 46 I. C. C., 39, combination through rates on walnut dimension lumber from Des Moines, Iowa, to points east of the Indiana-Illinois state line, or for export, found unreasonable and unduly prejudicial to extent that the proportional commodity rates from Des Moines to upper Mississippi River east-bank crossings exceed 57 per cent of the corresponding proportional commodity rates from the Missouri River cities to Mississippi River crossings. Original report, 53 I. C. C., 484. *Railroad Commissioners of Iowa v. M. & St. L. R. R. Co.*, 673.

PROTECTIVE SERVICE.

Proposed rule eliminating the state of Illinois, and that portion of Indiana lying within the Chicago switching district, from the territory in which carriers' protective service against cold is now available, and withdrawing such service on traffic originating outside the so-called cold-weather zone, found not justified as the extension and development of protective service against cold, originally proposed and strongly urged by the Commission in *Perishable Freight Investigation*, 56 I. C. C., 449, would be extremely unlikely. Heater Service for Fresh Fruits and Vegetables, 293. The value of protective service against cold to the shipper in insuring against loss and damage, to the carrier in stimulating traffic, and to the nation in conserving the food supply, makes it imperative that no individual railroad be permitted to hinder its further development. *Id.* (288).

PUBLICATION.

Under the powers conferred by section 6 of the act, the Commission has promulgated certain rules and regulations governing the form and construction of tariffs which require that rates be explicitly stated and arranged in a systematic manner. They do not require the publication of joint rates from and to all points. *Boston Wool Trade Asso. v. A. & S. Ry. Co.*, 365 (383).

Proposal of carriers to make a tariff rule, providing the basis of charges on shipments of live stock in mixed carloads read "the highest rate and highest minimum weight" instead of "the highest rate and minimum weight," held to be justified, as such charge effectuates the Commission's tariff regulations concerning definiteness and certainty in the publication of rates. *Minimum Weight on Live Stock in Mixed Carloads*, 546.

PUBLIC INTEREST.

In considering a prayer for the establishment of joint rates the effect upon the possible diversion of traffic should be given consideration; but the desire of a carrier to retain traffic to its own lines should not be permitted to outweigh the public interest if the establishment thereof is shown to be necessary or desirable. *Mason Valley Mines Co. v. W. P. R. R. Co.*, 477 (481).

The public interest at the point of delivery is to be considered as well as that at the point of origin in considering a prayer for the establishment of joint rates. *Id.* (482).

PUBLIC STORAGE. See **STORAGE.**

PURPOSE OF ACT.

The interstate commerce act is not only designed to cure violations thereof, but also to prevent them. Undue prejudice and preference may be brought about as readily by reducing one of two related rates as by increasing the other rate. *Coal from Detroit, Toledo & Ironton R. R. Mines*, 564 (566).

RAIL-AND-WATER. See also **LAKE AND RAIL.**

The rail-and-lake rate on coffee from New York, N. Y., to Chicago, Ill., need not be made the measure of the rate from New Orleans, La., to Chicago, as in no case has the Commission required rail lines to meet water-and-rail rates, and the rail-and-lake rates from New York are not used during the winter months and much of the traffic moves all-rail even when the water routes are open. *Coffee from Galveston and other Gulf Ports*, 26 (32).

RATE COMPARISONS.

Contention that the Commission should confine itself to a comparison of a rate from a point within a switching district to a point outside such district with the industrial and interchange switching rates in effect within the district and the through rates accorded complainant's competitors, and that comparisons with rates for rural hauls of equal distance are improper, not sustained, as competitive and other conditions have served to bring about very low switching charges at industrial centers. *For-sythe Leather Co. v. Director General, as Agent*, 17 (19).

Contention that the maintenance of a higher export rate to one point than the contemporaneous domestic rate to a farther distant point over the same line in the same direction was in violation of the long-and-short-haul provision of the fourth section, *Held*: In ascertaining whether the provisions of that section have been contravened, rates of the same character must be compared. *Wenger-Armstrong Petroleum Co. v. Director General, as Agent*, 175 (176).

The Commission can not accept as a fair standard or basis of comparison rates prescribed in a former proceeding, but later rescinded upon further hearing. *Procter & Gamble Co. v. A. C. R. R. Co.*, 213 (217).

RATE MAKING.

The amount of loss and damage claims normally accruing in the course of transportation is a factor which is properly taken into account in the fixation of the rates for transportation. Rates on Grain, Grain Products, and Hay, 85 (93).

The Commission can not make rates solely with regard to the resultant ability of a shipper to meet commercial competition. *Mason Valley Mines Co. v. W. P. R. R. Co.*, 477 (482).

If the Commission were to start with a clean slate some so-called scientific basis of rate making, based on strict mileages, might be adopted, but as it is, the process of rate making and dealing with rate situations must necessarily be one of evolution, not revolution. *Kansas Rates, Fares, and Charges*, 679 (681).

REASONABLENESS OF RATE. *See* MEASURE OF RATE.

REBATES.

That a carrier may by contract employ the owner of property transported to perform a portion of the transportation service is recognized by section 15 of the act. The effect of such a contract is to determine the amount to be paid for the services rendered. The Commission's duty is to take care lest the sum paid becomes so large as to amount to an unlawful concession from the transportation rate; and it may determine what is a reasonable charge as the maximum to be paid by the carrier and fix the same by appropriate order. *Cambria Steel Co. v. Director General*, 737 (740-741).

RECONSIGNMENT. *See also* DIVERSION.

Shipments found misrouted where embargoes were a disability of the carriers, which did not confer upon them the right of diverting shipments to higher-rated routes, contrary to shippers' instructions, especially where there were no provisions in tariffs at time shipments moved prohibiting reconsignment to embargoed points, and nothing which would have precluded shipper from specifically routing via lower-rated routes had it billed shipments to final destinations in the first instance. *McGowin Lumber & Export Co. v. Director General, as Agent*, 694 (697).

Unless tariffs prohibit reconsignment to embargoed points, no demurrage charges accrue. *Id.* (697).

REDUCTION IN RATES.

In General: Contention that it is impracticable to single out individual items for special treatment, and that a reduction in the rating will inevitably be followed by demands for similar treatment of similar commodities, *Held*: Reason insufficient for refusing to accord a reasonable rating and if other articles are entitled to similar treatment, they should have it. *Indian Packing Corp. v. Director General, as Agent*, 205 (210).

By Carriers:

Carrier published a tariff which was intended to substitute a minimum of 80,000 pounds for the minimum charge of \$15 per car established by the Director General under general order No. 28 on raw clay from Post Pipe Spur, Ark., to Texarkana, Tex., but through inadvertence the tariff did not carry the necessary provision for application of such minimum. Subsequently tariff corrected and minimum established. *Held*: \$15 minimum charge unreasonable to extent it exceeded rate and minimum subsequently established. Reparation awarded. *Texarkana Pipe Works v. Director General, as Agent*, 6.

Proposal of the Pennsylvania R. R. to absorb certain switching charges on traffic, other than grain and feed, receiving transit at Toledo, Ohio, resulting in reduced through charges to shippers, found justified. Absorption of Switching Charges at Toledo, Ohio, 8.

Rate on glue stock from Wauwatosa, Wis., located in the Milwaukee switching district, to Carrollville, Wis., during federal control, found not unreasonable, but found unduly prejudicial to extent it exceeded rate from other districts in the Milwaukee switching district, which rate was subsequently established from Wauwatosa. Reparation denied. *Forsythe Leather Co. v. Director General, as Agent*, 17.

Rate on coal from Piper, Ala., to Fairfield, Ala., moving during federal control, found not unreasonable as compared with lower rate via another route, which lower rate was subsequently established via rate of movement. Rate assailed does not compare unfavorably with other rates on coal for two-line hauls for similar distances in the same territory. *Little Cahaba Coal Co. v. Director General, as Agent*, 50.

Combination rate on lignite coal from Stanton, N. Dak., to Hecla, S. Dak., found unreasonable to extent it exceeded lower joint rates subsequently established from other producing points in North Dakota to points in South Dakota, including Hecla. Through oversight tariff did not include Stanton in points of origin. Reparation awarded. *Stehley v. Director General, as Agent*, 59.

Applicable class-B rate on apples, in barrels, from Westville, Okla., to Fayetteville, Ark., exceeded lower commodity rate subsequently established, which lower rate was on a parity with rates on like traffic between points in the same territory for similar distance. Reparation awarded. *West v. St. L.-S. F. Ry. Co.*, 69.

Combination rate on peanuts from Greenwood, Fla., to Bainbridge, Ga., found not unreasonable as compared with lower joint rate subsequently established or with lower rates between other points for similar or greater distances which were not in effect at time shipments moved. *Empire Cotton Oil Co. v. Director General, as agent*, 71.

REDUCTION IN RATES—Continued.

By Carriers—Continued.

The unreasonableness of a rate is not established by its subsequent reduction by the carrier. *Id.* (72).

Class rates on barley flour from Minneapolis, Minn., and Omaha, Nebr., to Los Angeles, Calif., and certain other points in California, Arizona, and New Mexico, found unreasonable to extent they exceeded lower commodity rates on wheat and other kinds of flour, which lower rate was subsequently made applicable to barley flour. Reparation awarded. *Pillsbury Flour Mills Co. v. Director General, as Agent*, 81.

The mere reduction of a rate is insufficient to prove that the former higher rate was unreasonable. *Anaconda Copper Mining Co. v. Director General, as Agent*, 136 (139).

Proposed revision of class and commodity rates in territory west of the Cascade Mountains extending from Portland, Oreg., on the south to Vancouver, B. C., on the north, involving both increases and reductions, found justified in part. Rates between North Pacific Coast Points, 159.

Class rate on fresh meat from Spokane, Wash., to Salt Lake City, Utah, found unreasonable to extent it exceeded lower commodity rate from Portland, Oreg., San Francisco, and Los Angeles, Calif., which lower rate was subsequently made applicable from Spokane. Reparation awarded. *Armour & Co. v. O. S. L. R. R. Co.*, 173.

Double first-class rate applicable on life-saving apparatus, oxygen, 1. c. l., and by analogy assessed on a c. l. shipment of damaged gas masks from Camp Logan, Tex., to Chicago, Ill., found unreasonable to extent it exceeded rating of first class, applicable on component parts thereof and other articles, which lower rate was subsequently established on gas masks. Reparation awarded. *Houston Chamber of Commerce v. Director General, as Agent*, 181.

Sixth-class rates on sulphuric acid, in iron drums, from Richmond, Va., to Kannapolis, N. C., found unreasonable as compared with rates for like distances between various southern points and to extent they exceeded lower commodity rate to Charlotte, N. C., a farther distant point, which lower rate was subsequently made applicable to Kannapolis. Reparation awarded. *Canon Mfg. Co. v. Director General, as Agent*, 183.

Upon further hearing, certain carriers authorized to reduce rates on gasoline from Somerset to San Antonio, Tex., and on gasoline and fuel oil from Grand Prairie to Dallas, Tex., to a basis lower than prescribed in the *Shreveport Case*, 48 I. C. C., 312, in order to meet motor truck competition and keep the traffic to their rails. Railroad Commission of Louisiana *v. A. H. T. Ry. Co.*, 197.

Rate on gasoline, in tank-car loads, from West Tulsa, Okla., to Avondale, La., for export, but reforwarded to Gretna, La., for domestic use, found unreasonable to extent it exceeded lower rate from West Tulsa to Gretna, via other routes, which lower rate was subsequently established via route of movement. Reparation awarded. *Gulf Refining Co. v. St. L.-S. F. Ry. Co.*, 201.

Unreasonableness is not established by the existence of a lower rate over a route other than the route of movement and the subsequent reduction of the rate over the route of movement. *Bedford Pulp & Paper Co. v. Director General, as Agent*, 219 (220).

REDUCTION IN RATES—Continued.

By Carriers—Continued.

Combination rate on feeder cattle from Lone Pine, Calif., to Brawley and Calipatria, Calif., moving during federal control, found not unreasonable. Rate charged represented substantial reductions from rates previously in effect, and still further reductions subsequently established were made effective because live stock in the originating district was in poor condition. Furthermore, the route traversed is over a desert country which is sparsely populated and produces little traffic. *Jones v. Director General*, as Agent, 221.

Considering the regularity and volume of movement, the low value of the commodity, and the fact that an additional car-rental charge was collected when the equipment was furnished by the carrier, no justification found to appear for switching charges on sand, during federal control, moving in complainant's equipment from its plant in Memphis, Tenn., to points within the switching limits of that city, which were greatly in excess of those applicable on all other traffic switched within that district. Reparation awarded on basis of lower switching charge subsequently established. *Missouri Portland Cement Co. v. Director General*, as Agent, 243.

Rates on liquid asphalt, in tank-car loads, from Mereaux, La., to Cincinnati, Ohio, exceeded the rate applicable from New Orleans, La., which lower rate was subsequently established from Mereaux. Reparation awarded. *Carey Mfg. Co. v. Director General*, as Agent, 292.

Proposed revision of commodity rates, involving both increases and reductions, designed to eliminate deviations from the long-and-short-haul provision of the fourth section of the act, in the construction of rates primarily affecting Mississippi Valley points and Nashville, Tenn., found not justified in certain instances and justified in others. Maximum bases prescribed. Rates to, from, and between Points South of Ohio River, 306.

Proposed cancellation of specific rates on box shooks from points in Virginia and the Carolinas, to destinations in New York and other eastern states and to substitute therefor the prevailing lumber rates, involving both increases and reductions and which would result in a disturbance of a long-standing relationship of rates between competing points at a time when the industry is seriously depressed, found not justified. Box Shooks from Southeast to Eastern Points, 389.

Rate on a sporadic shipment of coke from St. Paul., Minn., to St. Louis, Mo., found not unreasonable as compared with lower rate in the opposite direction, which lower rate was subsequently established in both directions as neither the voluntary reduction of a rate, nor the existence of a lower rate in the opposite direction is, of itself, a sufficient ground upon which to base a finding of unreasonableness. *Mississippi Valley Iron Co. v. C. & B. & Q. R. R. Co.*, 441.

Switching charges on sand and gravel moving during federal control between points within the switching limits of Indianapolis, Ind., found unreasonable to extent they exceeded lower charges subsequently established. Reparation awarded. *Citizens Gas Co. v. Director General*, as Agent, 457.

REDUCTION IN RATES—Continued.

By Carriers—Continued.

Coarse-grain rates from group points in Minnesota, the Dakotas, Nebraska, Kansas, and Iowa, to points in Montana, Idaho, Oregon, and Washington, as increased on June 25, 1918, to the wheat-rate basis, found unreasonable to extent they exceeded lower rate subsequently established when the coarse-grain and wheat rates were reduced to the special rate basis, as increased on the same date, applying from all points in the same groups. Reparation awarded. *Van Dusen Harrington Co. v. Director General*, as Agent, 461.

Charges on fuel oil, in tank-car loads, from Destrehan, La., to Covington, La., during federal control, found not unreasonable as compared with lower charges from New Orleans, Mereaux, Baton Rouge, North Baton Rouge, and other Louisiana points, which lower rate was subsequently established from Destrehan. *St. Tammany Ice & Mfg. Co. (Ltd.) v. Director General*, as Agent, 491.

Rate on coal from Herrin, Ill., to Chicago, Ill., during federal control, found not unreasonable because in excess of lower rate subsequently established. Rate charged compares favorably with rates from mines in eastern Kentucky, West Virginia, Ohio, and Pennsylvania to destinations in central territory for comparable distances, and considerably higher rates apply from various points in Illinois to destinations in Iowa, Missouri, and Kansas, for approximately the same or lesser distances. *Ideal Fuel Co. (Inc.) v. Director General*, as Agent, 555.

Proposed reduction by the D., T. & I. R. R. in the interstate rates on coal from mines on its line in the Jackson county and Ironton groups in Ohio to Toledo, Ohio, Detroit, Mich., and other destinations, found not justified. If such reductions are permitted to become effective undue preference of such mines and undue prejudice to mines on other lines in the same and other groups in Ohio and other states would result. Coal from Detroit, Toledo & Ironton R. R. Mines, 564.

Rate on vegetable oils, in tank-car loads, imported from the Orient and moving from Everett and Tacoma, Wash., to Seattle, Wash., during federal control, assessed as a result of the cancellation of all import rates by the Director General under general order No. 28, found not unreasonable as compared with lower rate on soya-bean oil, which lower rate was subsequently made applicable to all vegetable oils. *Mitsui & Co. v. Director General*, as Agent, 585.

Domestic rate on antimony from Seattle, Wash., to Chicago, Ill., assessed as a result of the cancellation of all import rates by the Director General under general order No. 28 found unreasonable as compared with lower domestic rate from California terminals to eastern defined groups, which lower rate was subsequently made applicable to both import and domestic shipments between points here involved. Reparation awarded. *Great Western Smelting & Refining Co. v. Director General*, as Agent, 605.

Minimum charge of \$15 per car assessed for the factor of a combination rate beyond L. & N. bridge, Cincinnati, Ohio, on empty glass bottles moving from Carrel street station, Cincinnati, to Newport and Latonia, Ky., found unreasonable to extent it exceeded minimum of \$6.50, maximum \$10 per car, subsequently established. Reparation awarded. *Boldt Glass Co. v. Director General*, as Agent, 619.

REDUCTION IN RATES—Continued.

By Carriers—Continued.

Rate on gasoline and kerosene, in tank-car loads, from Lexington, Ky., to Cincinnati, Ohio, found unreasonable to extent it exceeded rate from Pryse and other Kentucky points for substantially greater distances, which lower rate was subsequently established from Lexington. Reparation awarded. *Moore Oil Refining Co. v. Director General*, as Agent, 621.

Proposed reduction in interstate rates on brick and articles taking same rates from Danville, Ill., to certain points in Indiana in the Chicago, Ill., group, and from Streator, Ill., to Chicago, in order that the Wabash R. R. which forms a circuitous route may compete for traffic moving via direct lines, found justified as to Streator. Establishment thereof from Danville found not justified as undue prejudice to Attica, Ind. would result. Brick from Danville, 624.

Commodity rate on canned condensed milk from Denmark, Wis., to Bangor, Me., exceeded lower fifth-class rate prescribed in *Hires Condensed Milk Co.*, 38 I. C. C., 441, and contemporaneously in effect on numerous canned products, which lower rate was subsequently made applicable to canned milk. Reparation awarded. *Armour & Co. v. C. & N. W. Ry. Co.*, 641.

Combination rate on petroleum refined oil, in tank-car loads, from Cabin Creek Junction, W. Va., to Bowling Green, Ky., both factors of which were increased 4.5 cents under general order No. 28 of the Director General found unreasonable to extent it exceeded the through rate plus a single flat increase, subsequently established, and unduly prejudicial as compared with the rate from Falling Rock, W. Va., a farther distant competing point from which but a single increase to the through rate was applied. Reparation awarded. *Pure Oil Co. v. Director General*, as Agent, 688.

By Commission:

Upon investigation, grain, grain products, and hay, on the whole, found to be bearing such a disproportionate share of transportation charges as to stifle and place a burden upon the industry. Rates within the western and mountain Pacific groups as defined in *Increased Rates, 1920*, 58 I. C. C., 220, found unjust and unreasonable for the future and reductions required. Rates on Grain, Grain Products, and Hay, 85.

Ratings on machine finished steel roller chains, in bags, of one-and-one-half times first class, 1. c. 1. and first class, c. 1., in official classification territory, found unreasonable to extent they exceeded ratings of second class, 1. c. 1., and fourth class, c. 1., on the same commodity when shipped in barrels or boxes. Reasonable ratings prescribed. *Link-Belt Co. v. P., C., C. & St. L. R. R. Co.*, 195.

Official classification rating of second class on sliced dried beef, in glass, 1. c. 1., found unreasonable as compared with rating on the same commodity in metal cans or in bulk, in barrels or boxes. Rating of third-class prescribed and reparation awarded. *Indian Packing Corp. v. Director General*, as Agent, 205.

Rates on vegetable oils from mill points in Oklahoma, Arkansas, and Louisiana to Dallas, Tex., found unreasonable to extent they exceed distance scale herein prescribed. *Procter & Gamble Co. v. A. C. R. R. Co.*, 213.

REDUCTION IN RATES—Continued.

By Commission—Continued.

Ratings applicable on mohair, camel's wool and hair, and alpaca hair in official, southern and western classification territories found unreasonable for the future to extent they exceed the ratings within the respective territories on wool in like form, package, and quantity. *Boston Wool Trade Asso. v. A. & S. Ry. Co.*, 365 (378).

Proportional commodity rate from Duluth, Minn., to Boston, Mass., lake-and-rail, on wool and mohair in the grease, in bags, sacks, and machine-pressed bales, found unreasonable for the future and reasonable maximum rates prescribed. *Id.* (380).

Proportional commodity rates to Boston, Mass., from Texas points, all rail, on wool and mohair in the grease, in bags, sacks, and machine-pressed bales, found unreasonable and reasonable basis of maximum rates prescribed. *Id.* (381-382).

Passenger fare of 10 cents for all passengers maintained by the Louisville & Northern Ry. & Lighting Co., an electric line, between Louisville, Ky., and New Albany, Ind., found unreasonable to extent it exceeds 10 cents per passenger for a single trip and commutation fare of 9 cents per passenger upon the purchase of not exceeding 12 tickets. *City of New Albany v. L. & N. Ry. & L. Co.*, 468.

Establishment of joint rates on ore and concentrates from Paxton and Engels, Calif., to Wabuska, Nev., found desirable in the public interest and existing rates for such transportation found unreasonable for the future to extent they exceed scale based upon released values, herein prescribed. *Mason Valley Mines Co. v. W. P. R. R. Co.*, 477.

Ratings in western classification on speedometers, speedometer heads, and speedometer connections, and rates thereon from Chicago, Ill., to certain Pacific coast points, found unreasonable. Maximum ratings and rates prescribed and reparation awarded. *Stewart-Warner Speedometer Corp. v. Director General*, as Agent, 541.

Rates on cedar shingles from points in the coast group in Oregon, Washington, and British Columbia to certain points in Oklahoma and Texas, which are higher than the rates on various kinds of lumber, other than cedar, found unreasonable to extent they exceed the differential prescribed in *West Coast Lumbermen's Asso.*, 44 I. C. C., 443. Reparation awarded and reasonable basis of rates prescribed. *A. & C. Mill Co. v. Director General*, as Agent, 548.

Distance rates on sand from Fort Gibson, Okla., to Joplin, Webb City, and Springfield, Mo., and Pittsburgh, Independence, and Iola, Kans., found unreasonable to extent they exceeded the Shreveport-Texas scale of rates prescribed in the *Shreveport Case*, 48 I. C. C., 312. Reasonable maximum rates prescribed and reparation awarded. *United Iron Works v. Director General*, as Agent, 601.

Rates on pipe and oil-well machinery from Scottsville, Tex., to Mansfield, La., found unreasonable to extent they exceeded rates in excess of the distance scale for similar distances prescribed in the *Shreveport Case*, 48 I. C. C., 312. Reasonable maximum rates prescribed and reparation awarded. *Norris v. T. & P. Ry. Co.*, 665.

REFINING IN TRANSIT. *See* TRANSIT ARRANGEMENTS.

REFRIGERATOR CARS. *See* PONY REFRIGERATORS.

REFUSED SHIPMENT.

Rate for the return movement of a refused shipment of copper bars, rough cast, from Rome, N. Y., to Perth Amboy, N. J., found not unreasonable as compared with lower rate in the opposite direction or with rates from Rome to other points for greater distances, or with rates on copper wire via route of movement. *Raritan Copper Works v. Director General*, as Agent, 691.

RELATIONSHIP OF RATES.

Where distances from New Orleans, La., and Galveston, Tex., do not differ by more than 100 miles the rates on coffee should be the same, and where difference is in excess of that distance differentials favoring the port which has the advantage authorized to be established, properly graded and not exceeding 7 cents. Coffee from Galveston and other Gulf Ports, 26 (32).

The rate on coffee from New Orleans, La., to lower Missouri River points, St. Joseph and Kansas City, Mo., inclusive, should not be higher than from Galveston, Tex. *Id.* (32).

Based upon the record which shows a different relationship of value between wheat and coarse grain and refers to a normal condition, present rates on coarse grains in western and mountain-Pacific groups as defined in *Increased Rates, 1920*, 58 I. C. C., 220, found unjust and unreasonable for the future to extent they may exceed rates 10 per cent less than on wheat. Rates on Grain, Grain Products, and Hay, 85 (100).

L. c. l. class rates on steel crown blocks and steel calf-wheel and bull-wheel shafts, in carloads, found unreasonable to extent they exceeded commodity rates on oil well supplies in mixed carloads. Reasonable maximum relationship of rates prescribed and reparation awarded. *Parkersburg Rig & Reel Co. v. Director General*, as Agent, 154.

Domestic rates on fuel oil are generally less than on refined oil, and in various cases the Commission has fixed reasonable rates upon crude or fuel oils 5 cents less than on refined oils. *Wenger-Armstrong Petroleum Co. v. Director General*, as Agent, 175 (176).

Upon further consideration, findings in former report, 62 I. C. C., 64, modified and maximum relationships of rates prescribed between points in North Carolina and Norfolk and Richmond, Va., on the one hand, and points in South Carolina and the southeast on the other, and between points in North Carolina and Norfolk and Richmond, on the one hand, and eastern points, on the other. *Corporation Commission of N. C. v. Director General*, 264.

The peculiar conditions warranting commodity rates negative the presumption of a necessarily close percentage relationship between classes and commodities. Rates to, from, and between points South of Ohio River, 306 (316).

The mere showing of the fact that in making effective the increases provided in general order No. 28 of the Director General, a slight disturbance was created in the percentage relationship which a specific rate bore to other rates between the same points, and the subsequent voluntary restoration of that relationship, does not warrant a condemnation of the rate in effect during the interim. *Ault & Wiborg Co. v. Director General*, as Agent, 443.

RELATIONSHIP OF RATES—Continued.

Both factors of combination rate on coal from Kenilworth, Utah, to Hillyard, Wash., increased under general order No. 28 of the Director General, the factor Spokane, Wash., to Hillyard being increased by application of the minimum class scale. Competitors on an industrial track in Spokane were charged the Spokane rate plus a switching charge. *Held*: While factor Spokane to Hillyard appears unreasonable, the through rate resulting from its use is not shown unreasonable but found unduly prejudicial to extent it exceeds the rate to Spokane by more than amounts herein prescribed. Reparation denied. *Edwards & Bradford Lumber Co. v. Director General, as Agent, 503.*

Upon theory that the Springfield and southern Illinois groups were differentially related, the Wabash and Chicago & Alton railroads increased their rates under general order No. 28 on fine coal to Kansas City, Mo. Subsequently the Alton reduced its rates by applying the increase without regard to any differential relationship, which widened the spread existing between those carriers. Later the Wabash restored the former spread by also reducing its rates. Applicable rates on shipments moving during period when higher spread in effect found not unreasonable. *Consolidated Coal Co. v. Director General, as Agent, 536.*

Rates on cedar shingles, from coast group points in Oregon, Washington, and British Columbia to destinations in other states and Canada, which are higher than the rates on various kinds of lumber, other than cedar, found not unreasonable, discriminatory, or unduly prejudicial, except to certain points in Oklahoma and Texas they are unreasonable to extent they exceed the differential prescribed in *West Coast Lumbermen's Asso., 44 I. C. C., 443.* Reparation awarded and reasonable basis of rates prescribed. *A. & C. Mill Co. v. Director General, as Agent, 548.*

A proper rate relationship between competitive groups, particularly on such a commodity as coal, is in many respects of greater importance to the shipping public than the measure of the rate itself. Coal from Detroit, Toledo & Ironton R. R. Mines, 564 (566).

The act is not only designed to cure violations thereof, but also to prevent them. Undue prejudice and preference may be brought about as readily by reducing one of two related rates as by increasing the other rate. *Id. (566).*

The Commission would not be warranted in permitting the establishment of rates which would disrupt a rate relationship fixed by the Commission and which has existed for many years. *Id. (566).*

Rates on wooden bull-wheel arms, cants, and pins found unreasonable and unduly prejudicial to extent they exceed the rates on lumber. Relationship of rates prescribed and reparation awarded. *Parkersburg Rig & Reel Co. v. Director General, as Agent, 568.*

Following *Ohio Valley Case, 53 I. C. C., 148,* and *Illinois Coal Cases, 1920, 62 I. C. C., 741,* rates on bituminous coal from mines in western Kentucky to points in the southern peninsula of Michigan found not unreasonable, but to extent they exceed, on a joint basis, by more than 25 cents per ton the rates from mines in the southern Illinois group to the same destinations, found unduly prejudicial. Relationship of rates prescribed. *West Kentucky Coal Bureau v. I. C. R. R. Co., 577.*

Based upon operating conditions and cost of service rates on sheep in double-deck cars, which are higher than the rate on fat cattle per car, found not unreasonable, but basis of readjustment suggested. *Slater v. S. P. Co., 647.*

RELATIONSHIP OF RATES—Continued.

Where two commodities, now admittedly noncompetitive, have long ceased to bear any common or recognized relationship, and where the basic rates upon both show no appreciable difference in stability or duration, the presumption that the rates applicable to one of the two fixes a reasonable maximum standard for the other is not convincing. *Id.* (652).

RELATIVE ADJUSTMENT. See ADJUSTMENT OF RATES: RELATIVE RATES.

RELATIVE RATES. See also PREFERENCES AND PREJUDICES.

Arizona points: Rates on cereals from El Paso, Tex., and defined territorial groups to Phoenix, Tempe, and Mesa, Ariz., found not unreasonable as compared with rates to more distant California points. *Phoenix Chamber of Commerce v. Director General, as Agent*, 452.

Carney's Point, Gibbstown, and Paulsboro, N. J.: Rates on common salt from Retsof, Watkins, Ithaca, and Ludlowville, N. Y., to, constructed by the addition of a 5-cent arbitrary over the rates to Philadelphia, Pa., found not unreasonable as compared with rates to Marcus Hook, Pa., Wilmington, Del., Baltimore, Md., and other competitive points taking the Philadelphia basis of rates. *Du Pont de Nemours & Co. v. Director General, as Agent*, 14.

Columbus, Ohio: Rate on frozen beef from, to New York, N. Y., found unreasonable as compared with lower commodity rates from Cincinnati, Hamilton, Dayton, London, and Xenia, Ohio, all more distant points to which Columbus is directly intermediate, established in accordance with rule 77 of Tariff Circular 18-A. *Morris & Co. v. Director General, as Agent*, 435.

Destrehan, La.: Charges on fuel oil, in tank-car loads, from, to Covington, La., during federal control, found not unreasonable as compared with lower charges from New Orleans, Mereaux, Baton Rouge, North Baton Rouge, and other Louisiana points, which lower rate was subsequently established from Destrehan. *St. Tammany Ice & Mfg. Co. (Ltd.) v. Director General, as Agent*, 491.

Export Oil Spur, La.: Export rate on fuel oil, in tank-car loads, from Burkburnett, Tex., to, for export, found not unreasonable or unduly prejudicial as compared with lower domestic rate to New Orleans and other Louisiana ports. *Wenger-Armstrong Petroleum Co. v. Director General, as Agent*, 175.

Haggart, N. Dak.: Rates on fresh meats from, to St. Paul and Duluth, Minn., found unreasonable to extent they exceeded the rates from Mason City and Cedar Rapids, Iowa and Austin and Winona, Minn., to Duluth. Reparation awarded. *Equity Co-Operative Packing Co. v. Director General, as Agent*, 615.

Hazelhurst, Miss.: Rate applicable on sulphate of ammonia from Gary, Ind., to, found unreasonable as compared with rate from Gary to Jackson, Miss., a point intermediate to Hazelhurst, and to extent it exceeded lower rate from South Chicago, Ill., to Hazelhurst. *Hazelhurst Oil Mill & Fertilizer Co. v. Director General, as Agent*, 203.

Hudson, N. Y.: Rates on cement from, to certain New England destinations not shown unreasonable or otherwise unlawful as compared with rates from Montreal, Canada, to the same destinations. *Atlas Portland Cement Co. v. G. T. Ry. Co. of C.*, 21.

Iowa Park, Tex.: Rates on crude petroleum, in tank-car loads, from, to New Orleans, La., found not unreasonable as compared with rates from the midcontinent, Texas, and Louisiana fields for substantially equal distances, approved or prescribed by the Commission in previous cases. *Liberty Oil Co. v. Director General, as Agent*, 289.

RELATIVE RATES—Continued.

- Kannapolis, N. C.: Sixth-class rates on sulphuric acid, in iron drums, from Richmond, Va., to, found unreasonable as compared with rates for like distances between various southern points and to extent they exceeded lower commodity rate to Charlotte, N. C., a farther distant point, which lower rate was subsequently made applicable to Kannapolis. Reparation awarded. *Cannon Mfg. Co. v. Director General*, as Agent, 183.
- Kirk, Oreg.: Rates on sheep in double-deck cars from, to San Francisco, Calif., and bay points, found unreasonable to extent they exceeded rates from Chiloquin, Oreg. Reparation awarded. *Slater v. S. P. Co.*, 647 (657, 659).
- Lexington, Ky.: Rate on gasoline and kerosene, in tank-car loads, from, to Cincinnati, Ohio, found unreasonable to extent it exceeded rate from Pryse and other Kentucky points for substantially greater distances, which lower rate was subsequently established from Lexington. Reparation awarded. *Moore Oil Refining Co. v. Director General*, as Agent, 621.
- Louisiana points: Rates on iron and steel tanks, k. d., and second-hand lumber from Jenks and Morris, Okla., and Ranger, Tex., to points in Louisiana found not unreasonable as compared with rates from other Oklahoma points to Shreveport, La., and points in the vicinity of Shreveport. *General Iron Works v. Director General*, as Agent, 532.
- Mereaux, La.: Rates on liquid asphalt, in tank-car loads, from, to Cincinnati, Ohio, found unreasonable to extent it exceeded the rate applicable from New Orleans, La., which rate was subsequently made applicable from Mereaux. Reparation awarded. *Carey Mfg. Co. v. Director General*, as Agent, 292.
- Montana points: Rates on newsprint paper from points in Oregon and Washington to destinations in Montana, found not unreasonable or unduly prejudicial as compared with relatively lower rates to Salt Lake City and Ogden, Utah and Denver, Colo., which lower rates were fixed not by defendants but by another carrier. *Tribune v. B., A. & P. Ry. Co.*, 557.
- Omaha, Nebr.: Rates on white-clover seed from Gilby, Grand Forks, and Michigan, N. Dak., to, found not unreasonable or unduly prejudicial as compared with lower rates from same points of origin to St. Louis, Mo., and Chicago, Ill., farther distant competing points. *Nebraska Seed Co. v. Director General*, as Agent, 75.
- Perth Amboy, N. J.: Rate for the return movement of a refused shipment of copper bars, rough cast, from Rome, N. Y., to, found not unreasonable as compared with lower rates from Rome to other points for greater distances. *Raritan Copper Works v. Director General*, as Agent, 691.
- Philadelphia, Pa.: Rate on paraffin wax, in tank-car loads, from North Baton Rouge, La., to, found unreasonable to extent it exceeded the rate to Bayonne, N. J., a farther distant point over route of movement. Reparation awarded. *Atlantic Refining Co. v. Director General*, as Agent, 702.
- Red Bank, Ohio: Rate on bituminous coal from Harveyton, Ky., to, found unreasonable to extent it exceeded lower rate in effect to various points north of Red Bank and to which Red Bank is intermediate. Reparation awarded. *Boldt Paper Mills Co. v. Director General*, as Agent, 223.

RELATIVE RATES—Continued.

Rome, N. Y.: Rates on copper bars from Anaconda and Black Eagle, Mont., to, found not unreasonable or unduly prejudicial because in excess of the rate to Utica, N. Y., a farther distant point to which no copper bars have ever moved; or as compared with rates on other traffic which does not compete with copper bars and which is accorded lower rates to Rome than to New York, N. Y. *Anaconda Copper Mining Co. v. Director General, as Agent*, 136.

Spokane, Wash.: Class rate on fresh meat from, to Salt Lake City, Utah, found unreasonable to extent it exceeded lower commodity rate from Portland, Oreg., San Francisco, and Los Angeles, Calif., which lower rate was subsequently made applicable from Spokane. Reparation awarded. *Armour & Co. v. O. S. L. R. R. Co.*, 173.

Stanton, N. Dak.: Combination rate on lignite coal from, to Hecla, S. Dak., found unreasonable to extent it exceeded lower joint rates subsequently established from other producing points in North Dakota to points in South Dakota, including Hecla. Through oversight tariff did not include Stanton in points of origin. Reparation awarded. *Stehley v. Director General, as Agent*, 59.

Sweetwater, Tenn.: Rates on sulphate of barium from, to Cincinnati and St. Bernard, Ohio, found not unreasonable as compared with lower rate in effect from Cartersville, Ga. *Ault & Wiborg Co. v. Director General, as Agent*, 755.

Tolenas, Calif.: Rate on lime rock from Flint, Calif., to, during federal control, found not unreasonable as compared with lower rates between other intrastate points for similar and greater distances as the circumstances and conditions attendant upon the transportation from Flint to Tolenas is substantially dissimilar from those obtaining from and to such other points. *Pacific Portland Cement Co. v. Director General, as Agent*, 507.

Uniontown, D. C.: Combination rates on bituminous coal from New River district (group No. 1) of West Virginia to, found not unreasonable as compared with joint rate to Washington, D. C. *Washington Steel & Ordnance Co. v. Director General, as Agent*, 191.

RELEASED RATES.

Conclusions reached in former report, 52 I. C. C., 671, 727, that the Cummins amendment does not apply to transportation from a point in the United States to a point in a nonadjacent foreign country, adhered to. *Export Bill of Lading*, 347 (354).

Establishment of joint rates on ore and concentrates from Paxton and Engles, Calif., to Wabuska, Nev., found desirable in the public interest, and existing rates for such transportation found unreasonable for the future to extent they exceed scale based upon released values, herein prescribed. *Mason Valley Mines Co. v. W. P. R. R. Co.*, 477.

REMEDY.

Undue prejudice wholly in respect of intrastate traffic is not within the Commission's jurisdiction, the remedy lying with the state authorities. *Railroad Commission of Louisiana v. A. H. T. Ry. Co.*, 248 (250).

REPARATION. See DAMAGES.

64 I. C. C.

RESTORED RATES.

Prior to federal control, San Francisco, Calif., and Seattle, Wash., were on a rate parity as to export traffic but due to the cancellation of all export rates by the Director General this adjustment disrupted. Rate applicable on pig lead moving from Granby, Mo., to Seattle, for export, found not unreasonable, discriminatory, or unduly prejudicial as compared with lower rate to San Francisco, or with rate established subsequent to movement when Seattle and San Francisco were again placed on a rate parity. *Mitsui & Co. v. Director General*, as Agent, 4.

Rates charged on petroleum and asphaltum from Franklin, Pa., to intra-state destinations, during federal control, found unreasonable to extent they exceeded the rates from Oil City, Pa. Higher rates were established through error and it was the carriers' practice for many years to apply the Oil City rates on shipments from Franklin, which rate basis was subsequently restored. Reparation awarded. *Atlantic Refining Co. v. Director General*, as Agent, 64.

Due to the cancellation of all export rates by the Director General under general order No. 28, the previously existing relationship of rates on wheat between certain points in Kansas when milled in transit at Salina, Kans., and forwarded to New Orleans, La., for export, was destroyed and subsequently restored. *Held*: Higher rates charged on shipments moving during interim found not unreasonable as subsequently established rates were part of a general readjustment involving both increases and reductions. *Lee Flour Mills Co. v. Director General*, as Agent, 226.

Following *American Trading Co.*, 60 I. C. C., 273, domestic rates applicable on imported straw braid and hemp braid, assessed as a result of the cancellation by the Director General of all import rates under general order No. 28, found not unreasonable or unduly prejudicial as compared with import rates subsequently established. *Peabody & Co. v. Director General*, as Agent, 429.

The mere showing of the fact that in making effective the increases provided in general order No. 28 of the Director General, a slight disturbance was created in the percentage relationship which a specific rate bore to other rates between the same points, and the subsequent voluntary restoration of that relationship, does not warrant a condemnation of the rate in effect during the interim. *Ault & Wiborg Co. v. Director General*, as Agent, 443.

Upon theory that the Springfield and southern Illinois groups were differentially related, the Wabash and Chicago & Alton railroads increased their rates under general order No. 28 on fine coal to Kansas City, Mo. Subsequently the Alton reduced its rates by applying the increase without regard to any differential relationship, which widened the spread existing between those carriers. Later the Wabash restored the former spread by also reducing its rates. Applicable rates on shipments moving during period when higher spread in effect found not unreasonable. *Consolidated Coal Co. v. Director General*, as Agent, 536.

Proposed cancellation of existing basis for rates on cast-iron pipe and pipe connections from certain points in Tennessee and Alabama to Montana destinations, and restoration of the normal basis of combination rates on St. Louis, Mo., so as to permit the traffic to move under the same rates through the different gateways, found justified. Proposed rates compare favorably with rates on cast-iron pipe and on other iron and steel articles from Pittsburgh, Pa., Columbus, Ohio, and Chicago, Ill., to the same Montana destinations. *Cast-Iron Pipe from Birmingham*, 638.

RESTRICTED RATES.

Proposal of the Norfolk & Western Ry. to eliminate the joint class rates on high explosives which now apply to stations on its line under exceptions to the classification, leaving higher combinations in effect, and to restrict the application of such rates to shipments moving to stations on the C. & O. and points beyond, found not justified. Facts presented do not justify a departure from the joint class-rate basis prescribed in *Nitro Powder Co.*, 35 I. C. C., 77. Restrictions in Routing Explosives via N. & W. Ry., 10.

Where a rate is unrestricted in its application it applies on shipments which move through a point via which it was not intended to apply even though such route is unusual and unduly circuitous. *St. Tammany Ice & Mfg. Co. (Ltd.) v. Director General*, as Agent, 491 (492).

RETURNED EMPTIES.

Rates charged on returned empty zinc-lined wooden boxes from Haskell, Parlin, and Carney's Point, N. J., to Hopewell, Va., via Potomac Yard, Va., found unreasonable to extent they exceeded rates contemporaneously in effect via the usual route through Norfolk, Va. Reparation awarded. *Du Pont de Nemours & Co. v. Director General*, as Agent, 170.

RETURN MOVEMENT. See also BOTH DIRECTIONS.

Reduced return rates were established by the Director General as emergency rates to prevent cattle from starving. Because of the high price of winter feed, and under impression that such reduced rates would be applied, shipper sent his cattle south for wintering, which cattle were subsequently returned. *Held*: Since no emergency existed and there was no tariff authority for the reduced return rate on cattle moving from points of origin here involved, rates charged found not unreasonable. *Parks v. Director General*, as Agent, 147.

RETURN ON INVESTMENT.

In exercising the power to prescribe just and reasonable rates under section 1 of the act, the Commission is now required by section 15a to initiate, modify, establish, or adjust rates so that carriers as a whole or in designated rate groups will, under proper standards of operation, earn an aggregate annual net railway operating income equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation. Rates on Grain, Grain Products, and Hay, 85 (93).

The duty cast upon the Commission by section 15a is continuing and looks to the future. It does not constitute a guaranty to the carriers, nor is the obligation cumulative. The Commission is not restricted by past or present statistics of operation and earnings. These are serviceable only as they illuminate the future. What is contemplated by the law is that in this exercise of rate-making power the result shall reflect the Commission's best judgment as to the basis which may reasonably be expected for the future to yield the prescribed return. *Id.* (99).

Experience has shown the limitations which surround in actual practice the operation of section 15a of the act. When it became apparent that the general increases of 1920, intended to give carriers a specified return, failed by a considerable margin to reach the desired mark, carriers and shippers alike agreed that it was not the Commission's duty to raise rates to still higher levels. To have done this would clearly have been a vain thing, harmful alike to the country and to the carriers. The rate adjustment can not with advantage be made dependent upon fluctuations in traffic. *Id.* (99).

RETURN ON INVESTMENT—Continued.

Viewed as an administrative matter, the question of what rules and regulations are or will be reasonable in connection with transportation covered by a bill of lading, depends principally upon the adjustment of the carrier's compensation to the degree of risk, reflected in operating expenses, which it incurs. The fair return as contemplated in section 15a of the act must also be borne in mind. *Export Bill of Lading*, 347 (354).

REVENUE. *See* EARNINGS.

REVERSE DIRECTIONS. *See* BOTH DIRECTIONS.

REVIVAL OF CLAIM. *See* LIMITATION OF ACTION.

RISK.

Viewed as an administrative matter, the question of what rules and regulations are or will be reasonable in connection with transportation covered by a bill of lading, depends principally upon the adjustment of the carrier's compensation to the degree of risk, reflected in operating expenses, which it incurs. The fair return as contemplated in section 15a of the act must also be borne in mind. *Export Bill of Lading*, 347 (354).

The greater the risk incurred by carriers in connection with transportation covered by bills of lading, the greater the value to the shipper of the service rendered, which should be rewarded correspondingly. A lesser compensation is appropriate in cases where the carrier is to a large extent relieved from full liability. *Id.* (354).

ROUTES.

Rate on coal from Piper, Ala., to Fairfield, Ala., moving during federal control, found not unreasonable as compared with lower rate via another route, which lower rate was subsequently established via route of movement. Rate assailed does not compare unfavorably with other rates on coal for two-line hauls for similar distances in the same territory. *Little Cahaba Coal Co. v. Director General*, as Agent, 50.

Rates on cotton seed from certain points in Florida to Cordele, Ga., based on the Jacksonville, Fla., combinations, through which point none of the shipments moved, found unreasonable to extent they exceeded the lowest combinations over routes of movement and other routes. Reparation awarded. *Empire Cotton Oil Co. v. Director General*, as Agent 64.

Had shipper left routing open or observed tariff restrictions, several routes over which lower rate applied could have been used, but since shipments were routed via higher rated route through error of agent, that fact of itself does not entitle him to reparation. Every shipper is charged with notice of the terms of interstate tariffs governing his shipments; and mere showing of the existence of lower rates over other routes and comparisons based upon distance alone, are insufficient to establish the unreasonableness of the rate charged. *South Chester Tube Co. v. M., K. & T. Ry. Co.*, 78.

Shipper urged that as carriers were under unified control and operation during federal control and not in competition, lower rate applicable via route other than route of movement should have been applied. *Held*: Fact that lines were under federal control did not affect the validity of the legally established rates over the separate routes and it was the duty of carrier to forward shipments via the cheapest available route consistent with routing instructions. *West Kentucky Coal Co. v. Director General*, as Agent, 151 (152).

ROUTES—Continued.

A rate over a particular route is not presumed to be unreasonable merely because a lower rate applies over another route. *Id.* (153).

Rates charged on returned empty zinc-lined wooden boxes from Haskell, Parlin, and Carney's Point, N. J., to Hopewell, Va., via Potomac Yard, Va., found unreasonable to extent they exceeded rates contemporaneously in effect via the usual route through Norfolk, Va. Reparation awarded. *Du Pont de Nemours & Co. v. Director General*, as Agent, 170.

Where shipment is tendered unrouted, it is carrier's duty to forward shipment via the cheapest available route. *Kentucky Wholesale Co. (Inc.) v. Director General*, as Agent, 193.

Rate on gasoline, in tank-car loads, from West Tulsa, Okla., to Avondale, La., for export, but reforwarded to Gretna, La., for domestic use, found unreasonable to extent it exceeded lower rate from West Tulsa to Gretna, via other routes, which lower rate was subsequently established via route of movement. Reparation awarded. *Gulf Refining Co. v. St. L.-S. F. Ry. Co.*, 201.

Unreasonableness is not established by the existence of a lower rate over other routes and the subsequent reduction of the rate over the route of movement. *Bedford Pulp & Paper Co. v. Director General*, as Agent, 219 (220).

First-class rate on frozen beef from Columbus, Ohio, to New York, N. Y., moving as routed by the operating committee of the Railroad Administration, found unreasonable to extent it exceeded lower commodity rate contemporaneously in effect via other routes. Reparation awarded. *Morris & Co. v. Director General*, as Agent, 435.

Complainant routed shipments via higher rated routes because it desired prompt delivery and there was a rumor that lower rated route was congested. Contention that, as the railroads were being operated by the Director General as a unified system, there was no justification for the maintenance of rates over routes of movement different from those in effect via other routes, *Held*: Complainant routed shipments to suit its own purposes, and mere showing of lower rates over other routes does not warrant condemnation of the rates over the routes of movement, even though shipments moved during federal control. *Pfeister & Vogel Leather Co. v. Director General*, as Agent, 437.

Where a rate is unrestricted in its application it applies on shipments which move through a point via which it was not intended to apply even though such route is unusual and unduly circuitous. *St. Tammany Ice & Mfg. Co. (Ltd.) v. Director General*, as Agent, 491 (492).

Rates on glycerin, in iron drums, from Kansas City, Mo., to Fayville, Ill., moving via two line haul, found unreasonable to extent they exceeded rate involving a single line haul direct, which lower rate had previously been in effect via routes of movement, but was cancelled because of a dispute over divisions. Reparation awarded. *Aetna Explosives Co. (Inc.) v. C. & E. I. R. R. Co.*, 635.

Contention that since all carriers were under federal control the same rates should have applied over all routes between the same points, not sustained where circumstances and conditions via the different routes are dissimilar; and fact that lower rates applied between the same points over other available routes does not, standing by itself, prove the unreasonableness of the higher rates via route of movement. *Midland Linsed Products Co. v. Director General*, as Agent, 753.

ROUTING INSTRUCTIONS. *See* MISROUTING.

RULES OF PRACTICE.

Complaint filed informally within two-year period and formally within six months after notification that it could not be disposed of informally, as required by paragraph (g), Rule III, of the Commission's Rules of Practice, found not barred. *Gulf Refining Co. v. St. L.-S. F. Ry. Co.*, 201.

Complainant, in complying with Rule V of the Commission's Rules of Practice, authorized to include in reparation statement details of shipments made subsequent to hearing accompanied by proof in the form of an affidavit that it made the shipments and paid and bore the freight charges thereon, with understanding that if carriers object to proof in affidavit form they may request further hearing with respect to reparation. *Indian Packing Corp. v. Director General*, as Agent, 205 (210).

SCALE OF RATES. *See* DISTANCE RATES.

SCALE WEIGHT. *See* WEIGHT.

SECTION 1.

Requires that no more than just and reasonable rates for transportation be exacted, and in determining what is just and reasonable it has always been recognized that, among other factors, not only the cost of the service, but its value to the user, must be considered. Rates on Grain, Grain Products, and Hay, 85 (98).

In exercising the power to prescribe just and reasonable rates as provided under section 1 of the act, the Commission is now required by section 15a to initiate, modify, establish, or adjust rates so that carriers as a whole or in designated rate groups will, under proper standards of operation, earn an aggregate annual net railway income equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation. *Id.* (98).

SECTION 2. *See also* DISCRIMINATION.

Contention that a violation of section 2 results from the fact that a portion of a switching movement to a connection with industrial tracks located near a city is identical with the portion of a line haul movement to such city, not sustained where the switching movement does not pass complainant's plant or through the city. *Edwards & Bradford Lumber Co. v. Director General*, as Agent, 503 (505).

Bull-wheel material on the one hand, and lumber on the other, do not constitute such "like traffic" that a different charge for their transportation is violative of section 2 of the act. *Parkersburg Rig & Reel Co. v. Director General*, as Agent, 568 (573).

SECTION 3. *See also* PREFERENCES AND PREJUDICES.

The inhibition of section 3 of the act against undue prejudice applies to localities as well as to shippers at those localities. *Pioneer Lumber Co. v. Director General*, as Agent, 485 (489).

In order to constitute undue prejudice under section 3 a competitive relation between the persons, localities, or descriptions of traffic concerned must generally appear. *Pioneer Pole & Shaft Co. v. Director General*, as Agent, 744 (746).

SECTION 4. *See* LONG AND SHORT HAUL; THROUGH AND LOCAL.

SECTION 6.

The conditions of a bill of lading regarding the liability of the carriers affect "the value of the service rendered to the * * *, shipper, or consignee" within the meaning of section 6 of the act. *Export Bill of Lading*, 347 (352).

SECTION 6—Continued.

Under the powers conferred by section 6 of the act, the Commission has promulgated certain rules and regulations governing the form and construction of tariffs which require that rates be explicitly stated and arranged in a systematic manner. They do not require the publication of joint rates from and to all points. *Boston Wool Trade Asso. v. A. & S. Ry. Co.*, 365 (383).

SECTION 15.

That a carrier may by contract employ the owner of property transported to perform a portion of the transportation service is recognized by section 15 of the act. The effect of such a contract is to determine the amount to be paid for the services rendered. The Commission's duty is to take care lest the sum paid becomes so large as to amount to an unlawful concession from the transportation rate; and it may determine what is a reasonable charge as the maximum to be paid by the carrier, and fix the same by appropriate order. *Cambria Steel Co. v. Director General*, 737 (740-741).

A division out of a joint rate or an absorption of the charges of a common-carrier industrial line is essentially different from the allowance contemplated by section 15 of the act. *Id.* (742).

SECTION 15a.

In exercising the power to prescribe just and reasonable rates as provided under section 1 of the act, the Commission is now required by section 15a to initiate, modify, establish, or adjust rates so that carriers as a whole or in designated rate groups will, under proper standards of operation, earn an aggregate annual net railway operating income equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation. *Rates on Grain, Grain Products, and Hay*, 85 (98).

The duty cast upon the Commission by section 15a is continuing and looks to the future. It does not constitute a guaranty to the carriers, nor is the obligation cumulative. The Commission is not restricted by past or present statistics of operation and earnings. These are serviceable only as they illuminate the future. What is contemplated by the law is that in this exercise of rate-making power the result shall reflect the Commission's best judgment as to the basis which may reasonably be expected for the future to yield the prescribed return. *Id.* (99).

Experience has shown the limitations which surround in actual practice the operation of section 15a of the act. When it became apparent that the general increases of 1920, intended to give carriers a specified return, failed by a considerable margin to reach the desired mark, carriers and shippers alike agreed that it was not the Commission's duty to raise rates to still higher levels. To have done this would clearly have been a vain thing, harmful alike to the country and to the carriers. The rate adjustment can not with advantage be made dependent upon fluctuations in traffic. *Id.* (99).

The purpose of section 15a was undoubtedly to better stabilize the credit of railroads, reassure investors, and attract capital to the railroad industry. It is plainly the Commission's duty to do everything in its power to carry out this purpose. *Id.* (99).

SECTION 15a—Continued.

Viewed as an administrative matter, the question of what rules and regulations are or will be reasonable in connection with transportation covered by a bill of lading, depends principally upon the adjustment of the carrier's compensation to the degree of risk, reflected in operating expenses, which it incurs. The fair return as contemplated in section 15a of the act must also be borne in mind. *Export Bill of Lading*, 347 (354).

SECTION 25.

Rules and regulations made prescribing form of through export bill of lading to be issued by carriers subject to the act for application to the transportation of property, in connection with ocean carriers, whose vessels are registered under the laws of the United States, from points in the United States designated under the provisions of section 25 of the act to points in nonadjacent foreign countries. *Export Bill of Lading*, 347.

Carriers challenge the Commission's power to do more than prescribe the "form" as distinguished from the substance of a bill of lading, but such interpretation would imply that each carrier could insert its own peculiar phraseology in its bill of lading, while the intention of Congress to have a uniform bill of lading prescribed by the Commission is clearly indicated in section 25, under which the Commission is also required to "preserve for carriers by water the protection of limited liability provided by law," and this can not be done by specifying color of paper or size of type. *Id.* (352).

SHORT-HAUL TRAFFIC.

Rates on sand, slag, and crushed stone from Joliet and Thornton, Ill., to the Chicago switching district and from and to points within the district found not unjustly discriminatory nor unduly prejudicial to interstate transportation of sand and gravel to the district. *Chicago Sand & Gravel Producers v. Director General*, as Agent, 37.

Rates on sand and gravel from Illinois points in the outer zone to the Chicago switching district found unduly prejudicial to the interstate transportation of the same commodities from Wisconsin points to the Chicago district. Nonprejudicial basis of rates prescribed and reparation denied. *Id.* (49).

Local intrastate rate on marble spalls from quarries in the vicinity of Knoxville, Tenn., to complainant's crushing plant at that point, during federal control, found not unreasonable or unduly prejudicial as compared with lower switching rate from other quarries in the same general vicinity to a lime kiln near by, involving a much shorter haul and dissimilar services; or with rate from competing marble quarries at Mascot and Strawberry Plains, Tenn., which latter points do not ship spalls to Knoxville on local intrastate rates. *Appalachian Marble Co. (Inc.) v. Director General*, as Agent, 67.

Considering the regularity and volume of movement, the low value of the commodity, and the fact that an additional car-rental charge was collected when the equipment was furnished by the carrier, no justification found to appear for switching charges on sand, during federal control, moving in complainant's equipment from its plant in Memphis, Tenn., to points within the switching limits of that city, which were greatly in excess of those applicable on all other traffic switched within that district. Reparation awarded on basis of lower switching charge subsequently established. *Missouri Portland Cement Co. v. Director General*, as Agent, 243.

SHORT-HAUL TRAFFIC—Continued.

Rates on common brick from points outside the Chicago switching district to points within said district found not unreasonable but unduly prejudicial to extent they exceed the rates from points inside that district to interstate destinations therein by more than 10 cents per net ton. Nonprejudicial basis of rates prescribed and reparation denied. *Illinois Brick Co. v. Director General*, as Agent, 273.

Switching charges on sand and gravel moving during federal control between points within the switching limits of Indianapolis, Ind., found unreasonable to extent they exceeded lower charges subsequently established. Reparation awarded. *Citizens Gas Co. v. Director General*, as Agent, 457.

Minimum charge of \$15 per car assessed for the factor of a combination rate beyond L. & N. bridge, Cincinnati, Ohio, on empty glass bottles moving from Carrel street station, Cincinnati, to Newport and Latonia, Ky., found unreasonable to extent it exceeded minimum of \$6.50, maximum \$10 per car, subsequently established. Reparation awarded. *Boldt Glass Co. v. Director General*, as Agent, 619.

Where issue is whether charges collected for a specified service were unreasonably high, question as to whether that service be termed a line haul or switching movement not decided. *Id.* (620).

SHORT LINE.

Failure of carriers to extend blanket rates to points on a certain independent short line while maintaining such blanket rates to other more distant points in the blanket territory on their main and branch lines or on independent connecting lines, found to result in undue prejudice. Nonprejudicial rates prescribed and reparation denied. *Pioneer Lumber Co. v. Director General*, as Agent, 485.

SPARSITY OF TRAFFIC.

Combination rate on feeder cattle from Lone Pine, Calif., to Brawley and Calipatria, Calif., moving during federal control, found not unreasonable. Rate charged represented substantial reductions from rates previously in effect, and still further reductions subsequently established were made effective because live stock in the originating district was in poor condition. Furthermore, the route traversed is over a desert country which is sparsely populated and produces little traffic. *Jones v. Director General*, as Agent, 221.

Due to light passenger travel and difficult and expensive operating conditions, passenger fares between points in Arizona and points in Nevada, between points in Arizona and points in New Mexico, between points in New Mexico and points in Nevada, and between points in Arizona, Nevada, and New Mexico and points in other states, found not unreasonable, unjustly discriminatory, or unduly prejudicial. *Arizona Corporation Commission v. A. E. R. R. Co.*, 253.

Neither combination rates nor components thereof found unreasonable *per se* when consideration given to the facts that carrier incurred an operating deficit and is operated through a sparsely settled country with no present prospect of increased traffic. *Pioneer Lumber Co. v. Director General*, as Agent, 485 (487).

SPECIAL RATES.

Coarse-grain rates from group points in Minnesota, the Dakotas, Nebraska, Kansas, and Iowa, to points in Montana, Idaho, Oregon, and Washington, as increased on June 25, 1918, to the wheat-rate basis, found unreasonable to extent they exceeded lower rate subsequently established when the coarse-grain and wheat rates were reduced to the special-rate basis, as increased on the same date, applying from all points in the same groups. Reparation awarded. *Van Dusen Harrington Co. v. Director General, as Agent*, 461.

SPORADIC MOVEMENT.

Rate on a sporadic shipment of coke from St. Paul, Minn., to St. Louis, Mo., found not unreasonable as compared with lower rate in the opposite direction, which lower rate was subsequently established in both directions, as neither the voluntary reduction of a rate nor the existence of a lower rate in the opposite direction is of itself a sufficient ground upon which to base a finding of unreasonableness. *Mississippi Valley Iron Co. v. C. & B. & Q. R. R. Co.*, 441.

Fifth-class rates on iron tanks, k. d., from Cushing, Okla., to Central City, Ohio, and Morgantown, W. Va., found not unreasonable as compared with lower emergency commodity rate established from Cushing to Roxana, Ill., upon representation of a competing company which contemplated the removal of its refinery to the latter-named point, and which expired by limitation, or with lower commodity rates maintained in the opposite direction in which there is a regular movement. *Pure oil Co. v. Director General, as Agent*, 444.

Class rates applying on sporadic shipments can not be condemned merely because commodity rates are maintained in the opposite direction in which there is a regular movement. *Id.* (445).

SPOTTING CARS.

Increased charges resulting from the refusal of trunk-line carriers to pay an allowance to complainant or its industrial line for terminal switching and spotting to and from its plant at Pittsburgh, Pa., while performing like services without additional charge for other industries in the same district, found to have resulted in unreasonable charges but not in undue prejudice by reason of uncertainty as to whether competitors were similarly circumstanced as to operating conditions. Reparation awarded from earliest date within the period of the statute of limitations down to the date when such allowances were again restored. *Oliver Iron & Steel Co. v. P. & L. E. R. R. Co.*, 447.

Defendants' denial to complainant of an allowance for spotting cars within its plant at Johnstown, Pa., equal to the cost of such service, not shown to have subjected complainant to the payment of unreasonable rates, or to undue prejudice as compared with services and allowances accorded competitors at various points. *Cambria Steel Co. v. Director General*, 737.

The Commission is without power to require carriers to pay allowances to shippers for spotting. *A fortiori*, it can not compel a carrier to increase an allowance of this kind on the sole ground that it is inadequate to cover the cost to the shipper whom it has employed to perform the particular service. *Id.* (741).

SPREAD OF RATES.

Upon theory that the Springfield and southern Illinois groups were differentially related, the Wabash and Chicago & Alton railroads increased their rates under general order No. 28 on fine coal to Kansas City, Mo. Subsequently the Alton reduced its rates by applying the increase without regard to any differential relationship, which widened the spread existing between those carriers. Later the Wabash restored the former spread by also reducing its rates. Applicable rates on shipments moving during period when higher spread in effect found not reasonable. *Consolidated Coal Co. v. Director General*, as Agent, 536.

STANDARD TIME. *See* TIME.

STATE AND INTERSTATE.

Rates on sand, slag, and crushed stone from Joliet and Thornton, Ill., to the Chicago switching district and from and to points within the district found not unjustly discriminatory nor unduly prejudicial to interstate transportation of sand and gravel to the district. *Chicago Sand & Gravel Producers v. Director General*, as Agent, 37.

Rates on sand and gravel from Illinois points in the outer zone to the Chicago switching district found unduly prejudicial to the interstate transportation of sand and gravel from Wisconsin points to the Chicago district. Nonprejudicial basis of rates prescribed and reparation denied. *Id.* (49).

Upon further hearing, order for removal of undue prejudice and unjust discrimination entered in original report, 59 I. C. C., 290, modified by striking therefrom the name of the Fonda, Johnstown & Gloversville R. R. Co., which carrier does not "participate in the transportation" as that term is used in the order. *Rates, Fares, and Charges of the N. Y. C. R. R. Co.*, 55.

Certain intrastate rates required by state authority to be maintained within the state of Missouri, lower than the corresponding interstate rates authorized in *Increased Rates, 1920*, 58 I. C. C., 220, found unduly prejudicial to interstate shippers, unduly preferential of intrastate shippers, and unjustly discriminatory against interstate commerce. *Missouri Rates and Charges*, 233.

On further hearing, intrastate rates on sand and gravel from Hart Spur to Fort Worth, Tex., excepted from findings in former report, 48 I. C. C., 312, as such rates would or could not result in any undue prejudice to Shreveport, La., and since the undue prejudice complained of is wholly in respect of intrastate traffic to Fort Worth from Hart Spur and Bonner Spur, respectively, the Commission is without jurisdiction, the remedy lying with the state authority. *Railroad Commission of Louisiana v. A. H. T. Ry. Co.*, 248.

Intrastate passenger fares of the Pennsylvania-Ohio Power & Light Co., an interurban electric line, required by franchise contract to be maintained between Hubbard and Youngstown, Ohio, and which are lower than the corresponding interstate fares between Sharon, Pa., and Hubbard, and between Sharon and Youngstown, found unduly preferential of intrastate passengers, unduly prejudicial to interstate passengers, and unjustly discriminatory against interstate commerce. *Ohio Rates, Fares, and Charges*, 493.

If the maintenance of intrastate passenger fares fixed by a franchise contract results in unjust discrimination against interstate commerce, it is within the Commission's power to remove it by prescribing other and different intrastate fares. *Id.* (498).

STATE AND INTERSTATE—Continued.

Intrastate passenger fares of the Steubenville, East Liverpool & Beaver Valley Traction Co., an interurban electric line, required by ordinance or franchise contracts to be maintained between points in Ohio, and which are lower than the corresponding interstate fares between points in Pennsylvania and points in Ohio, found unduly preferential of intrastate passengers, unduly prejudicial to interstate passengers, and unjustly discriminatory against interstate commerce. Ohio and Pennsylvania Rates, Fares, and Charges, 517.

Upon further hearing, charge for transportation of live stock from stock-yards of the Belt R. R. & Stock Yards Co., at Indianapolis, Ind., to the plant of Kingan & Co., Inc., at that place, found not to result in undue preference of persons or localities in intrastate commerce, undue prejudice to persons or localities in interstate commerce, or in unjust discrimination against interstate commerce. Former report, 60 I. C. C., 337 modified so as to except such charge from its provisions. Indiana Rates, Fares, and Charges, 645.

Upon further hearing, as to situations disclosed certain interstate rates found to be the corresponding interstate rates to the level of which the intrastate rates within Kansas should be increased to remove the undue prejudice and discrimination found in the original report 62 I. C. C., 440. Kansas Rates, Fares, and Charges, 679.

Policy of state commission in removing undue prejudice against interstate commerce to select lowest interstate rate that can be readily found and which may move some traffic and measure it with the entire body of intrastate rates, if carried to its logical conclusion, would be so destructive of existing rate structures and of sound and well-established principles and methods of rate-making that to state it is to condemn it. Id. (681).

STATE COMMISSION.

Policy of state commission in removing undue prejudice against interstate commerce to select lowest interstate rate that can be readily found and which may move some traffic and measure it with the entire body of intrastate rates, if carried to its logical conclusion, would be so destructive of existing rate structures and of sound and well-established principles and methods of rate-making that to state it is to condemn it. Kansas Rates, Fares, and Charges, 679 (681).

STATE RATES. *See also* STATE AND INTERSTATE.

Rate on glue stock from Wauwatosa, Wis., located in the Milwaukee switching district, to Carrollville, Wis., during federal control, found not unreasonable, but found unduly prejudicial to extent it exceeded rate from other districts in the Milwaukee switching district, which rate was subsequently established from Wauwatosa. Reparation denied. Forsythe Leather Co. v. Director General, as Agent, 17.

Rate on coal from Piper, Ala., to Fairfield, Ala., moving during federal control, found not unreasonable as compared with lower rate via another route, which lower rate was subsequently established via route of movement. Rate assailed does not compare unfavorably with other rates on coal for two-line hauls for similar distances in the same territory. Little Cahaba Coal Co. v. Director General, as Agent, 50.

STATE RATES—Continued.

Minimum class-E rate, established June 25, 1918, pursuant to general order No. 28 of the Director General, and assessed on intrastate shipments of garbage from Minneapolis, Minn., to Spur No. 8, Minn., during federal control, found unreasonable to extent it exceeded the rate applicable prior to June 25, 1918, plus a 25 per cent increase. Reparation awarded. *Reservoir Heights Stock Ranch v. Director General*, as Agent, 57.

Rates charged on petroleum and asphaltum from Franklin, Pa., to intrastate destinations, during federal control, found unreasonable to extent they exceeded the rates from Oil City, Pa. Higher rates were established through error and it was the carriers' practice for many years to apply the Oil City rates on shipments from Franklin, which rate basis was subsequently restored. Reparation awarded. *Atlantic Refining Co. v. Director General*, as Agent, 64.

Local intrastate rate on marble spalls from quarries in the vicinity of Knoxville, Tenn., to complainant's crushing plant at that point, during federal control, found not unreasonable or unduly prejudicial as compared with lower switching rate from other quarries in the same general vicinity to a lime kiln near by involving a much shorter haul and dissimilar services, or with rate from competing marble quarries at Mascot and Strawberry Plains, Tenn., which latter points do not ship spalls to Knoxville on local intrastate rates. *Appalachian Marble Co. (Inc.) v. Director General*, as Agent, 67.

Combination rates on lump coal from Eldnar Mine and Cantine, Ill., to Rose Hill, Ill., and from Cantine to Jefferson Park, Ill., during federal control, found not unreasonable as they compare favorably with other rates in the same territory for comparable distances. *Merchants Coal & Coke Co. v. Director General*, as Agent, 73.

Upon further hearing, certain carriers authorized to reduce rates on gasoline from Somerset to San Antonio, Tex., and on gasoline and fuel oil from Grand Prairie to Dallas, Tex., to a basis lower than prescribed in the *Shreveport Case*, 48 I. C. C., 312, in order to meet motor-truck competition and keep the traffic to their rails. *Railroad Commission of Louisiana v. A. H. T. Ry. Co.*, 197.

Combination rate on feeder cattle from Lone Pine, Calif., to Brawley and Calipatria, Calif., moving during federal control, found not unreasonable. Rate charged represented substantial reductions from rates previously in effect, and still further reductions subsequently established were made effective because live stock in the originating district was in poor condition. Furthermore, the route traversed is over a desert country which is sparsely populated and produces little traffic. *Jones v. Director General*, as Agent, 221.

Rate on logs from Boyne Falls to Cadillac, Mich., during federal control, found not unreasonable as compared with other intrastate rates for similar distances. *Cobbs & Mitchell v. Director General*, as Agent, 229.

Considering the regularity and volume of movement, the low value of the commodity, and the fact that an additional car-rental charge was collected when the equipment was furnished by the carrier, no justification found to appear for switching charges on sand, during federal control, moving in complainant's equipment from its plant in Memphis, Tenn., to points within the switching limits of that city, which were greatly in excess of those applicable on all other traffic switched within that district. Reparation awarded on basis of lower switching charge subsequently established. *Missouri Portland Cement Co. v. Director General*, as Agent, 243.

STATE RATES—Continued.

Undue prejudice wholly in respect of intrastate traffic is not within the Commission's jurisdiction, the remedy lying with the state authorities. *Railroad Commission of Louisiana v. A. H. T. Ry. Co.*, 248 (250).

Switching charges on sand and gravel moving during federal control between points within the switching limits of Indianapolis, Ind., found unreasonable to extent they exceeded lower charges subsequently established. Reparation awarded. *Citizens Gas Co. v. Director General*, as Agent, 457.

Charges on fuel oil, in tank-car loads, from Destrehan, La., to Covington, La., during federal control, found not unreasonable as compared with lower charges from New Orleans, Mereaux, Baton Rouge, North Baton Rouge, and other Louisiana points, which lower rate was subsequently established from Destrehan. *St. Tammany Ice & Mfg. Co. (Ltd.) v. Director General*, as Agent, 491.

Rate on lime rock from Flint to Tolenas, Calif., during federal control, found not unreasonable as compared with lower rates between other intrastate points for similar and greater distances as the circumstances and conditions attendant upon the transportation from Flint to Tolenas is substantially dissimilar from those obtaining from and to such other points. *Pacific Portland Cement Co. v. Director General*, as Agent, 507.

Rate on coal from Herrin, Ill., to Chicago, Ill., during federal control, found not unreasonable because in excess of lower rate subsequently established. Rate charged compares favorably with rates from mines in eastern Kentucky, West Virginia, Ohio, and Pennsylvania to destinations in central territory for comparable distances, and considerably higher rates apply from various points in Illinois to destinations in Iowa, Missouri, and Kansas, for approximately the same or lesser distances. *Ideal Fuel Co. (Inc.) v. Director General*, as Agent, 555.

Lumber rates legally applicable on logs moving during federal control from Beebe, Hawthorne, and Gordon, Wis., to Hayward, Wis., for manufacture and reshipment over the lines of the carrier having the inbound haul, found unreasonable as compared with those in effect over other lines in Wisconsin and Michigan for similar distances, prescribed in *Saw Logs Between Michigan and Wisconsin Points*, 60 I. C. C., 350. Furthermore, rates on logs for manufacture and reshipment over the rails of the carrier having the inbound haul are often lower than the lumber rates between the same points. Reparation awarded. *Willow River Lumber Co. v. Director General*, as Agent, 575.

Rate on vegetable oils, in tank-car loads, imported from the Orient and moving from Everett and Tacoma, Wash., to Seattle, Wash., during federal control, assessed as a result of the cancellation of all import rates by the Director General under general order No. 28, found not unreasonable as compared with lower rate on soya-bean oil, which lower rate was subsequently made applicable to all vegetable oils. *Mitsui & Co. v. Director General*, as Agent, 585.

STATUTE OF LIMITATIONS. See LIMITATION OF ACTION.

STUEBENVILLE, EAST LIVERPOOL & BEAVER VALLEY TRACTION COMPANY.

An interurban electric line, found to be subject to the Commission's jurisdiction following *City of East Liverpool, Ohio*, 51 I. C. C., 563. *Ohio and Pennsylvania Rates, Fares, and Charges*, 517 (519).

STORAGE.

Charges accruing on unclaimed order notify shipment due to refusal of carrier, without surrender of bill of lading and payment of accrued charges, to comply with shipper's instructions to place in public warehouse, found not unreasonable or unlawful as there was no specific tariff provision requiring carrier to place shipment in public storage and carrier was legally bound to collect such charges in accordance with the applicable tariff rules and regulations. *Vim Motor Truck Co. v. Director General, as Agent*, 588.

STORAGE IN TRANSIT. See **TRANSIT ARRANGEMENTS.**

STRAIGHT BILL OF LADING. See **BILLS OF LADING.**

STRANGER TO THE RECORD.

Reparation awarded to complainant, a stranger to the transportation transaction, who was in reality the consignee and who bore the transportation charges. *Citizens Gas Co. v. Director General, as Agent*, 457 (460).

STREET RAILWAYS.

Contention that merger of electric railways, originally performing purely intrastate and city street-car service, into an operating company now performing an interstate interurban business, does not change their original status, *Held*: Whatever may have been the original service afforded by the respective railways at the time of the merger, the consolidated company now is carrying on much more than a street-railway business and in its interurban operations it now assumes the status of an electric railway and as such is engaged in interstate transportation. *Ohio and Pennsylvania Rates, Fares, and Charges*, 517 (524).

While it may be argued under *Omaha Street Railway Case*, 230 U. S., 324, that the Commission has no jurisdiction over a city street-car line, it can not be seriously contended that the federal government in its efforts to prevent discrimination is to be prevented by municipalities which, in franchises involving the use of their local streets, assume to regulate the rates to and between other cities; and particularly when such franchises impose rates which are unjust and menace the maintenance of interstate transportation facilities and service. *Id.* (524.)

Commission not warranted in disturbing the intrastate basis of fares on branch or city lines of the Steubenville, East Liverpool & Beaver Valley Traction Co., an interurban electric line, nor is it convinced that the issuance of transfers as now in effect intrastate is unreasonable in connection with fares for interstate travel, provided such transfers should be valid for transportation over one zone only. *Id.* (524).

SUBNORMAL RATES. See also **LOW RATES.**

Rates on hickory flitches and planks found not unreasonable or unduly prejudicial as compared with subnormal rough material rates applied on billets, with which no competitive relationship is shown to exist. Such low rates were established to encourage development of the country along carriers' lines and covered cost of service only. *Pioneer Pole & Shaft Co. v. Director General, as Agent*, 744.

Fact that carriers have accorded to one article a basis of rates below normal is of itself no reason, in the absence of unjust discrimination or undue prejudice, for requiring the establishment of the same rates on analogous articles, especially where shipper is directly benefited by the lower basis of rates already in effect. *Id.* (746).

SUCCESSOR.

Where defendant named in complaint is no longer an operating company and its successor is not a party to the proceeding, no order for the future entered. If findings are not complied with complainant's authorized to again call the matter to the Commission's attention for such further action as may be deemed appropriate. *City of New Albany v. L. & N. Ry. & L. Co.*, 468 (476).

SUPPLEMENTAL REPORT. *See also* FURTHER HEARING.

Upon supplemental report, original report and order, 61 I. C. C., 709, modified upon petition for interpretation and construction thereof, and differentials prescribed on newsprint paper to remove the undue prejudice found to exist against complainants at Sault Ste. Marie, Ont., in favor of competitors located in the Fox River, northern Wisconsin, and Minnesota groups, on traffic destined to the west and southwest. *Lake Superior Paper Co. (Ltd.) v. Director General*, 33.

Upon further consideration, findings in former report, 62 I. C. C., 64, modified and maximum relationships of rates prescribed between points in North Carolina and Norfolk and Richmond, Va., on the one hand, and points in South Carolina and the southeast on the other, and between points in North Carolina and Norfolk and Richmond, on the one hand, and eastern points, on the other. *Corporation Commission of N. C. v. Director General*, 264.

Upon supplemental report, orders defining limits of United States standard eastern and central time zones, 51 I. C. C., 273, and 53 I. C. C., 208, modified so as to include that portion of the Northern Ohio Ry. west of New London, Ohio, within the standard central zone, and to include all portions east thereof in the standard eastern zone. *Standard Time Zone Investigation*, 281.

Upon supplemental report, former report 64 I. C. C., 107, proposed increased rates on asphalt from Gulf ports to main line and branch line points of the N., C. & St. L. Ry. east of Nashville, Tenn., found not justified. Proposed rates to main-line points between Nashville and Chattanooga, Tenn., are clearly in violation of the fourth section, and record does not justify finding that rates to branch-line points for distances of from 250 to 300 miles less than the distance to Cincinnati, Ohio, should exceed, to extent proposed, the rate to that point and to stations on the main line of that carrier, now in effect, or which respondents must publish upon request under rule 77 of *Tariff Circular 18-A*. *Asphalt from Gulf Ports*, 395.

Upon supplemental report, proof having been submitted and defendants having agreed to accept an affidavit covering certain shipments, reparation awarded certain interveners upon shipments of bituminous coal from Appalachia and Dante districts in Virginia, to Union, S. C., on which charges were paid at rates found unreasonable in second supplemental report, 57 I. C. C., 584. Original and first supplemental reports, 37 I. C. C., 652 and 53 I. C. C., 741. *Cotton Mfrs. Asso. of S. C. v. C., C. & O. Ry.*, 633.

Upon supplemental report, and following *Sligo Iron Store Co.*, 62 I. C. C., 643, rate legally applicable found to be the through combination rate plus single increase as provided under general order No. 28 of the Director General, as one of the tariffs used in making combination rates on through shipments contained a rule that such rate would be subject to a single
64 I. C. C.

SUPPLEMENTAL REPORT—Continued.

increase, and there was a holding out to the shipper of the rate so constructed which carrier should protect. Refund directed. Former report 59 I. C. C., 246. *Indian Refining Co. (Inc.) v. Director General, as Agent*, 643.

Upon supplemental report, differentials found lawful in original report, 62 I. C. C., 741, found to be just and reasonable maximum and minimum differentials which carriers should establish in removing the undue prejudice found to exist in the relative adjustment in the rates on coal from mines in Illinois. *Illinois Coal Cases, 1920, 751.*

SUSPENDED RATES.

Because the act requires the Commission to give preference to suspension proceedings over all other questions pending before it and to decide such proceedings as speedily as possible, the Commission proceeded to a disposition of such a proceeding in advance of other cases with which it had been consolidated. *Coal from Detroit, Toledo & Ironton R. R. Mines, 564 (565).*

SWITCHING. *See also* INDUSTRIAL SWITCHING; INTERCHANGE SWITCHING.

Proposal of the Pennsylvania R. R. to reduce the amount of its absorption of switching charges of other carriers on grain and feed receiving transit at Toledo, Ohio, resulting in increased through charges to shippers, found not justified. Proposal to absorb certain switching charges on other traffic, resulting in reduced through charges to shippers, found justified. *Absorption of Switching Charges at Toledo, Ohio, 8.*

The burden of proof rests upon carriers to justify proposed increased through charges resulting from a reduction in the amount of switching charges they will absorb, even though they need not have increased the amount of such absorption by more than a certain per cent under *Increased Rates, 1920, 58 I. C. C., 220. Id. (9).*

Competitive and other conditions have served to bring about very low switching charges at industrial centers. *Forsythe Leather Co. v. Director General, as Agent, 17 (19).*

Considering the regularity and volume of movement, the low value of the commodity, and the fact that an additional car-rental charge was collected when the equipment was furnished by the carrier, no justification found to appear for switching charges on sand, during federal control, moving in complainant's equipment from its plant in Memphis, Tenn., to points within the switching limits of that city, which were greatly in excess of those applicable on all other traffic switched within that district. Reparation awarded on basis of lower switching charge subsequently established. *Missouri Portland Cement Co. v. Director General, as Agent, 243.*

Practice of certain carriers of refusing to absorb switching charges on common brick from Glen View and Deerfield, Ill., to points in the Chicago switching district, while making such absorptions on other commodities, found not unlawful. Such other commodities produce a much higher revenue, and if exceptions were not made on traffic from the above points carriers would not receive enough gross revenue to pay the terminal costs accruing to other lines. Furthermore, the Commission has recognized the propriety of various carriers reaching Chicago in excepting certain commodities and classes of traffic from the provisions of the Lowrey tariff. *Illinois Brick Co. v. Director General, as Agent, 273.*

SWITCHING—Continued.

Increased charges resulting from the refusal of trunk line carriers to pay an allowance to complainant or its industrial line for terminal switching and spotting to and from its plant at Pittsburgh, Pa., while performing like services without additional charge for other industries in the same district, found to have resulted in unreasonable charges but not in undue prejudice by reason of uncertainty as to whether competitors were similarly circumstanced as to operating conditions. Reparation awarded from earliest date within the period of the statute of limitations down to the date when such allowances were again restored. *Oliver Iron & Steel Co. v. P. & L. E. R. R. Co.*, 447.

Switching charges on sand and gravel moving during federal control between points within the switching limits of Indianapolis, Ind., found unreasonable to extent they exceeded lower charges subsequently established. Reparation awarded. *Citizens Gas Co. v. Director General*, as Agent, 457.

Freight rate authority issued by the Director General defines "inter-terminal switching" as "a switching movement from a track of one road to a track of another road when both tracks are within the switching limits of the same station or industrial switching district." *Id.* (459).

Proposed increased charge and minimum weight for switching interstate shipments between team tracks of the Chicago & Eastern Illinois and junctions with connecting lines at Chicago, Ill., when from or to points beyond the Chicago switching district, found justified, as there is no evidence tending to show that respondent should be required to maintain a lower charge or minimum than is applied generally by other trunk lines in the same district for a like kind of service. Switching at C. & E. I. Team Tracks, 500.

Proposed increase in switching charges at Attica, N. Y., where the switching line or a connection receives a line haul, found justified in part. Switching Charges at Attica, 582.

A lower charge may properly be made for switching involving a single movement than for a switching service which involves a double movement. *Id.* (584).

Where issue is whether charges collected for a specified service were unreasonably high, question as to whether that service be termed a line haul or switching movement not decided. *Boldt Glass Co. v. Director General*, as Agent, 619 (620).

SWITCHING DISTRICT. *See also* CHICAGO SWITCHING DISTRICT.

Rate on glue stock from Wauwatosa, Wis., located in the Milwaukee switching district, to Carrollville, Wis., during federal control, found not unreasonable, but found unduly prejudicial to extent it exceeded rate from other districts in the Milwaukee switching district, which lower rate was subsequently established from Wauwatosa. Reparation denied. *Forsythe Leather Co. v. Director General*, as Agent, 17.

Contention that the Commission should confine itself to a comparison of a rate from a point within a switching district to a point outside such district with the industrial and interchange switching rates in effect within the district, and the through rates accorded complainant's competitors and that comparisons with rates for rural hauls of equal distance are improper, not sustained, as competitive and other conditions have served to bring about very low switching charges at industrial centers. *Id.* (19).

SWITCHING DISTRICT—Continued.

Considering the regularity and volume of movement, the low value of the commodity, and the fact that an additional car-rental charge was collected when the equipment was furnished by the carrier, no justification found to appear for switching charges on sand, during federal control, moving in complainant's equipment from its plant in Memphis, Tenn., to points within the switching limits of that city, which were greatly in excess of those applicable on all other traffic switched within that district. Reparation awarded on basis of lower switching charge subsequently established. *Missouri Portland Cement Co. v. Director General*, as Agent, 243.

SYSTEM.

Shipper urged that as carriers were under unified control and operation during federal control and not in competition, lower rate applicable via route other than route of movement should have been applied, *Held*: Fact that lines were under federal control did not affect the validity of the legally established rates over the separate routes and it was the duty of carrier to forward shipments via the cheapest available route consistent with routing instructions. *West Kentucky Coal Co. v. Director General*, as Agent, 151 (152).

Complainant routed shipments via higher rated routes because it desired prompt delivery and there was a rumor that lower rated route was congested. Contention that, as the railroads were being operated by the Director General as a unified system, there was no justification for the maintenance of rates over routes of movement different from those in effect via other routes, *Held*: Complainant routed shipments to suit its own purposes, and mere showing of lower rates over other routes does not warrant condemnation of the rates over the routes of movement, even though shipments moving during federal control. *Pfeister & Vogel Leather Co. v. Director General*, as Agent, 437.

Contention that merger of electric railways, originally performing purely intrastate and city street-car service, into an operating company now performing an interstate interurban business, does not change their original status, *Held*: Whatever may have been the original service afforded by the respective railways at the time of the merger, the consolidated company now is carrying on much more than a street railway business and in its interurban operations it now assumes the status of an electric railway and as such is engaged in interstate transportation. *Ohio and Pennsylvania Rates, Fares, and Charges*, 517 (524).

Contention that as carriers during federal control were being operated as a unified system by the Director General, that the agent of a carrier was the agent of the Director General, and as such it was his duty to telegraph request for diversion to the last gateway through which he knew the traffic would pass, *Held*: Not sustained, as it was not the purpose of the federal control act or of the orders of the Director General in operating under that act to alter or nullify the rates and other provisions of the lawful tariffs. *Du Pont de Nemours & Co. v. Director General*, as Agent, 667 (670).

Contention that since all carriers were under federal control the same rates should have applied over all routes between the same points, not sustained where circumstances and conditions via the different routes are dissimilar; and fact that lower rates applied between the same points

SYSTEM—Continued.

over other available routes does not, standing by itself, prove the unreasonableness of the higher rates via route of movement. *Midland Linseed Products Co. v. Director General*, as Agent, 753.

TARIFF CIRCULAR 18-A.

Combination rate on pig lead from Granby, Mo., to Seattle, Wash., exceeded lower combination applicable under Rule 5 (b) of Tariff Circular 18-A. Refund of overcharges directed. *Mitsui & Co. v. Director General*, as Agent, 4.

Sixth-class rates on ashes from Paterson, N. J., to Goshen, N. Y., exceeded lower commodity rate from Croxton, N. J., to Goshen, applicable under rule 77 of Tariff Circular 18-A. Reparation awarded. *Le Prestre Miller Stock Farms (Inc.) v. E. R. R. Co.*, 149.

Rate on frozen beef from Columbus, Ohio, to New York, N. Y., found unreasonable as compared with lower rates from more distant points in Ohio to which Columbus is directly intermediate, established in accordance with rule 77 of Tariff Circular 18-A. *Morris & Co. v. Director General*, as Agent, 435.

Proposal to make inapplicable the intermediate clause on lumber and lumber products from southeastern territory when destined to local points on the Norfolk & Western, which would result in higher combination rates and violations of the long-and-short-haul provision of section 4 of the act, found not justified. Lumber from Southeast to N. & W. Points, 591.

TARIFF INTERPRETATION.

Combination rates, both factors of which were increased under general order No. 28 of the Director General, found legally applicable. Tariff rule in basing tariff simply prescribed a method of constructing through rates between the points in question, and the measure of the resulting through rates might vary with changes in the individual factors. *Charleston Mining & Mfg. Co. v. Director General*, as Agent, 553.

TAX. See WAR TAX.

TEMPORARY RATES.

Fifth-class rates on iron tanks, k. d., from Cushing, Okla., to Central City, Ohio, and Morgantown, W. Va., found not unreasonable as compared with lower emergency commodity rate established from Cushing to Roxana, Ill., upon representation of a competing company which contemplated the removal of its refinery to the latter named point, and which expired by limitation, or with lower commodity rates maintained in the opposite direction in which there is a regular movement. *Pure Oil Co. v. Director General*, as Agent, 444.

TERMINAL CHARGES.

Proposal to limit absorption of charges for switching and unloading grain and certain grain products at Galveston, Tex., on shipments from Minneapolis, Minn., when originating beyond and when for export, in so far as they make the terminal absorption on the comparatively small volume of tonnage from Minneapolis conform with those on the much larger volume from the Missouri River and from Nebraska, Kansas, Missouri, and Oklahoma, found justified. Terminal Charges on Grain at Texas Ports, 629.

THROUGH AND LOCAL.

Combination rates on cotton seed from certain points in Florida to Cordele, Ga., higher than the aggregates of intermediates over the route of movement, not protected by appropriate fourth section applications, found unlawful. *Empire Cotton Oil Co. v. Director General*, as Agent, 64 (65).

THROUGH AND LOCAL—Continued.

Joint rates on alfalfa meal from Winfield and Viola, Kans., to Cairo, Ill., milled in transit at Wichita, Kans., exceeded the aggregate of intermediate rates based on Kansas City and St. Louis, Mo. Reparation awarded. *Weiss Milling Co. v. A., T. & S. F. Ry. Co.*, 189.

Rates applicable on wheat from points in Kansas, milled at Salina, Kans., and forwarded as flour to Galveston, Tex., for export, found unreasonable to extent they exceeded the aggregate of intermediate rates to and beyond Kansas City, Mo. *Lee Flour Mills Co. v. Director General*, as Agent, 226.

Through rate on scrap iron from Sidney, Mont., to Tacoma, Wash., in excess of a lower combination from and to the same points, found unlawful and unreasonable as departure from the fourth section was not protected by application or otherwise. Reparation denied for want of proof. *Tacoma Junk Co. v. N. P. Ry. Co.*, 305.

Rate on iron and steel tanks, k. d., from Elmwood Place and Ivorydale, Ohio, to Gahagan, La., found unreasonable to extent it exceeded the aggregate of intermediate rates. Reparation awarded. *General Iron Works v. Director General*, as Agent, 532 (535).

Following *Aetna Explosives Co.*, 52 I. C. C., 235, charges assessed on new empty tank cars moving on their own wheels from Milton, Pa., to various destinations in the Carolinas found illegal to extent they exceeded the combination of rates based on official and southern classification ratings to and from Lynchburg and Petersburg Va. Refund directed. *Proctor & Gamble Co. v. Director General*, as Agent, 637.

Following *Hudson Mule Co.*, 63 I. C. C., 6, rate on corn meal from Memphis, Tenn., to Charleston, Mo., in excess of the aggregate of intermediate rates, protected by appropriate application, found unreasonable. Reparation awarded and fourth section relief denied. *Charleston Milling Co. v. M. P. R. R. Co.*, 671.

Through rate on paraffin wax, in tank-car loads, from North Baton Rouge, La., to Philadelphia, Pa., in excess of the aggregate of intermediate rates to and from Cincinnati, Ohio, not protected by appropriate application, found unlawful. Reparation awarded. *Atlantic Refining Co. v. Director General*, as Agent, 702.

Joint rate on billets, fitches, and other rough material from Crowder, Miss., and other points on the Batesville Southwestern R. R., to Cairo, Ill., in excess of the aggregate of intermediate rates, unprotected by appropriate application, found unreasonable and unlawful. Reparation awarded. *Pioneer Pole & Shaft Co. v. Director General*, as Agent, 744 (747).

THROUGH RATES.

Under ordinary conditions the practice of making through rates by adding to a rate for a long distance the full local rate from the basing point to destinations a relatively short distance beyond can not be approved. *Edwards & Bradford Lumber Co. v. Director General*, as Agent, 503 (506).

THROUGH ROUTES AND JOINT RATES.

Prayer for establishment of, on cereals from El Paso, Tex., via lines of Southern Pacific system through Phoenix, Ariz., to points on the Santa Fe between Phoenix and Mojave, Calif., and points on both the Santa Fe and Southern Pacific beyond Mojave, denied. *Phoenix Chamber of Commerce v. Director General*, as Agent, 452.

TIME.

Upon supplemental report, orders defining limits of United States standard eastern and central time zones, 51 I. C. C., 273, and 53 I. C. C., 208, modified so as to include that portion of the Northern Ohio Ry. west of New London, Ohio, within the standard central zone, and to include all portions east thereof in the standard eastern zone. Standard Time Zone Investigation, 281.

TON MILE REVENUE. See EARNINGS.

TONNAGE. See SPARSITY OF TRAFFIC; VOLUME OF TRAFFIC.

TRANSFERS.

Commission not warranted in disturbing the intrastate basis of fares on branch or city lines of the Steubenville, East Liverpool & Beaver Valley Traction Co., nor is it convinced that the issuance of transfers as now in effect intrastate is unreasonable in connection with fares for interstate travel, provided such transfers should be valid for transportation over one zone only. Ohio and Pennsylvania Rates, Fares, and Charges, 517 (524).

TRANSIT ARRANGEMENTS.

Inspection, weighing, grading, assorting, etc.: Defendants' failure to accord transit at Boston, Mass., on wool and mohair originating west of the Hudson River, while according such transit at Chicago, Ill., and other western points, found not to result in undue prejudice, and fact that dealers at those points have transit has not affected the supremacy of Boston as a wool market. *Boston Wool Trade Asso. v. A. & S. Ry. Co.*, 365 (388).

Milling:

Joint rates on alfalfa meal from Winfield and Viola, Kans., to Cairo, Ill., milled in transit at Wichita, Kans., exceeded the aggregate of intermediate rates based on Kansas City and St. Louis, Mo. Reparation awarded. *Weiss Milling Co. v. A., T. & S. F. Ry. Co.*, 189.

Due to the cancellation of all export rates by the Director General under general order No. 28, the previously existing relationship of rates on wheat between certain points in Kansas when milled in transit at Salina, Kan., and forwarded to New Orleans, La., for export, was destroyed and subsequently restored. *Held*: Higher rates charged on shipments moving during interim found not unreasonable, as subsequently established rates were part of a general adjustment involving both increases and reductions. *Lee Flour Mills Co. v. Director General*, as Agent, 226.

Basis of charges applicable on grain originating on the Lake Erie & Western, milled or accorded other transit services at Indianapolis, Ind., and reshipped to various destinations, and failure of tariffs to accord transit at Indianapolis in connection with the movement from and to certain of these points, found not unreasonable or discriminatory, but to extent that rates applicable via Indianapolis exceed those applicable via Noblesville, Ind., and to extent that transit is provided at Noblesville in connection with the through rates which are not provided in connection with such rates at Indianapolis, found unduly prejudicial. *Indianapolis Board of Trade v. B. & O. R. R. Co.*, 416.

TRANSIT ARRANGEMENTS—Continued.

Refining: Proposed cancellation of refining-in-transit arrangements at Laurel Hill (Nichols siding), N. Y., on copper and lead moving all rail from points west of Buffalo, N. Y., and Pittsburgh, Pa., and the refined product moved thence to New England destinations, which would result in the application of higher local rates on the refined product from Laurel Hill found not justified, as the proposed cancellation is the outgrowth of a disagreement between carriers over divisions which affords no justification for an increase in rates. *Refining in Transit of Copper Articles at Laurel Hill, N. Y.*, 257.

Storage: Proposed increased charge for storage in transit in the eastern and western groups of apples and pears, moving in transcontinental traffic, found not justified. Only justification offered is that the proposed charge should have been increased to basis sought following *Increased Rates, 1920*, 58 I. C. C., 220, but as the time limitation prescribed in that case had expired prior to the filing and effective date of the suspended schedules, justification of the increase must be based upon other foundations. *Storage Charges on Apples and Pears*, 627.

TRANSPORTATION.

Whatever transportation service a carrier is legally obliged to render, it has a right to perform for itself. *Oliver Iron & Steel Co. v. P. & L. E. R. R. Co.*, 447.

It is the duty of a carrier to furnish transportation upon reasonable request therefor, and not to unjustly discriminate as between shippers in the distribution of cars. This duty, however, only applies when the commodity tendered for shipment is actually on hand and conveniently located for prompt loading. *Wausau Southern Lumber Co. v. G. & S. I. R. R. Co.*, 732 (736).

TWO FOR ONE.

Proposed rule, applicable in official classification territory, providing that where carrier is unable to furnish the number of double-deck cars ordered for the transportation of hogs, for the substitution of single-deck cars in accordance with a table of equivalents, found not justified with respect to orders for double-deck cars in excess of 20. *Substitution of Single-Deck for Double-Deck Cars*, 251.

TWO LINE HAUL.

The mere fact that one haul is two-line and another one-line does not in and of itself justify a higher charge for the two-line haul. It is well established that for distances in excess of 500 miles the fact that the service is by two lines is largely negligible. *Douglas Chamber of Commerce v. A., T. & S. F. Ry. Co.*, 405 (411).

Rates on glycerin, in iron drums, from Kansas City, Mo., to Fayville, Ill., moving via two line haul found unreasonable to extent they exceeded rate involving a single line haul direct, which lower rate had previously been in effect via routes of movement but was cancelled because of a dispute over divisions. *Reparation awarded. Aetna Explosives Co. (Inc.) v. C. & E. I. R. R. Co.*, 635.

UNIFORM BILLS OF LADING. *See* BILLS OF LADING.

64 I. C. C.

UNPERFORMED SERVICE.

Point formerly reached by a narrow gauge line over which an out-of-line charge was established. Before shipments moved line made standard-gauge and became part of the main line thus rendering the out-of-line haul unnecessary, but charge for the extra service was not eliminated from tariff until after shipments moved. Charges assessed for unperformed out-of-line movement found illegal. *Grayson Owen Co. v. Director General*, as Agent, 157.

VAIN ACT.

Experience has shown the limitations which surround in actual practice the operation of section 15a of the act. When it became apparent that the general increases of 1920, intended to give carriers a specified return, failed by a considerable margin to reach the desired mark, carriers and shippers alike agreed that it was not the Commission's duty to raise rates to still higher levels. To have done this would clearly have been a vain thing, harmful alike to the country and to the carriers. The rate adjustment can not with advantage be made dependent upon fluctuations in traffic. Rates on Grain, Grain Products, and Hay, 85 (99).

VALUE. *See also* PRICE; RELEASED RATES.

Is only one of the many elements that enter into the classification of an article. *Link-Belt Co. v. P., C., C. & St. L. R. R. Co.*, 195 (196).

VALUE OF SERVICE.

Section 1 requires that no more than just and reasonable rates for transportation be exacted, and in determining what is just and reasonable it has always been recognized that, among other factors, not only the cost of the service, but its value to the user, must be considered. Rates on Grain, Grain Products, and Hay, 85 (98).

VOLUME OF TRAFFIC. *See also* SPARSITY OF TRAFFIC.

While an important element in the determination of reasonable rates, it is only one of the many elements to be considered. *Pillsbury Flour Mills Co. v. Director General*, as Agent, 81 (84).

Consideration given to tonnage figures submitted in arriving at a conclusion as to the proper adjustment which should be made in complying with the fourth section requirements and as to the justification of proposed increased rates. Rates to, from, and between Points South of Ohio River, 306 (331).

Table showing tonnage of fresh meat, paper and paper articles, canned goods, glucose, and bags and bagging from all points to various points in the southeast. Appendix. *Id.* (342-346).

Proposal to limit absorption of charges for switching and unloading grain and certain grain products at Galveston, Tex., on shipments from Minneapolis, Minn., when originating beyond and when for export, in so far as they make the terminal absorption on the comparatively small volume of tonnage from Minneapolis conform with those on the much larger volume from the Missouri River and from Nebraska, Kansas, Missouri, and Oklahoma, found justified. Terminal Charges on Grain at Texas Ports, 629.

VOLUNTARY REDUCTION. *See* REDUCTION IN RATES (BY CARRIERS).**WAR TAX.**

The Commission is without power to order refund of war taxes. *Sterling Lumber Co. v. Director General*, as Agent, 432 (434).

WATER AND RAIL. *See* LAKE-AND-RAIL; RAIL-AND-WATER.

WATER CARRIERS.

Suggestions made on behalf of various steamship lines, operating in the coastwise service, which would have the effect of limiting the liability of such carriers by inserting in the uniform bill of lading prescribed by the Commission certain water-line clauses. Appendix C, Domestic Bill of Lading and Live Stock Contract, 357 (360).

WATER COMPETITION. See COMPETITION.**WEATHER INTERFERENCE. See also FREEZING.**

Due to abnormal ice conditions in Norfolk harbor, the customary route and **via which shipments were specifically routed**, carrier diverted via routes taking higher rates. *Held*: Such shipments as were diverted without shipper's authorization, found misrouted. Reparation awarded. *Du Pont de Nemours & Co. v. Director General*, as Agent, 170.

Demurrage charges accruing on cars of sand which arrived in frozen condition, thus causing delay in unloading and resulting in subsequent shipments being constructively placed on tracks in the vicinity of complainant's plant or in railroad yards, found not unreasonable or otherwise unlawful as complainant failed to comply with tariff requirement which provided for the service upon carrier's agent of written notice or statement that lading was frozen when tendered. *Hamilton Foundry & Machine Co. v. Director General*, as Agent, 439.

WEIGHT. See also MINIMUM WEIGHT.**Estimated:**

Proposed changes in packing requirements, estimated weights, and weighing of eastbound transcontinental shipments of deciduous fresh fruits, which provide that if shipments are made in packages not conforming to the "standard railroad container," charges will be computed on basis of "actual" weight, determined by weighing at least five packages from each lot of the different kinds of fruit in other than standard packages, found not justified as some species of a particular kind weigh more than others and irregular packages of heavier fruit would thus be subjected to a higher charge because of excess over estimated weight specified in the tariff. Packing Requirements of Deciduous Fresh Fruits, 539.

Proposal to increase the estimated weight of petroleum crude oil, in tank car loads, from Texas to interstate points, established as a result of investigations conducted by carriers and representatives of the industry, without a corresponding change from producing points in Kansas and Oklahoma, found not justified. Estimated Weight on Petroleum Crude Oil from Texas, 545.

Proposal of the American Railway Express Co., to increase the estimated weights on berries in pony refrigerators, from points in Florida to destinations throughout the United States, found not justified as the practical and only effect of the proposed increases would be a substantial increase in transportation charges and respondent has not shown that the application of the existing rates to such estimated weights will not result in unreasonable charges to the shipper. *Weights on Berries in Pony Refrigerators*, 610.

Scale: Charges on white-cedar poles were based on scale weight ascertained by initial carrier after shipment left point of origin. Contention that charges should have been based on estimated weights used by producers in the territory where shipments originated, not sustained. The presumption of accuracy which attaches to scale weights must be rebutted clearly to be overthrown. *Pendleton & Gilkey v. Director General*, as Agent, 145.

WHAT TRAFFIC WILL BEAR.

Upon investigation, grain, grain products, and hay, on the whole, found to be bearing such a disproportionate share of transportation charges as to stifle and place a burden upon the industry. Rates within the western and mountain Pacific groups as defined in *Increased Rates, 1920*, 58 I. C. C., 220, found unjust and unreasonable for the future and reductions required. Rates on Grain, Grain Products, and Hay, 85.

WRITTEN NOTICE. *See* NOTICE.



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